

# EXHIBIT A

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**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

JUSTIN HART,  
Plaintiff,

v.

META PLATFORMS, INC., Inc.; TWITTER,  
INC.; VIVEK MURTHY in his official  
capacity as U.S. Surgeon General; JOSEPH  
R. BIDEN, JR. in his official capacity as  
President of the United States; ROB  
FLAHERTY, in his official capacity as  
Deputy Assistant to the President and White  
House Director of Digital Strategy; and  
CAROL Y. CRAWFORD, in her official  
capacity as Chief of Digital Media within the  
Centers for Disease Control and Prevention,

Defendants.

**Case No. 3:22-cv-00737-CRB**

**FIRST AMENDED COMPLAINT**

**DEMAND FOR JURY TRIAL**

## INTRODUCTION

1. “A fundamental principle of the First Amendment is that all persons have access to places where they can speak and listen, and then, after reflection, speak and listen once more. The [United States Supreme] Court has sought to protect the right to speak in this spatial context.” *Packingham v. North Carolina*, 137 S. Ct. 1730, 1735 (2017).

2. “While in the past there may have been difficulty in identifying the most important places (in a spatial sense) for the exchange of views, today the answer is clear. It is cyberspace — the ‘vast democratic forums of the Internet’ in general, *Reno v. American Civil Liberties Union*, 521 U. S. 844, 868 (1997), and social media in particular.” *Packingham*, 137 S. Ct. at 1735.

3. The Internet is a “dynamic, multifaceted category of communication” that “includes not only traditional print and news services, but also audio, video, and still images, as well as interactive, real-time dialogue.” *Reno*, 521 U. S. at 870.

4. Congress determined that “[t]he Internet and other interactive computer services offer a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity.” 47 U.S.C. § 230(a)(3). And Congress further found that “[t]he Internet and other interactive computer services have flourished, to the benefit of all Americans, with a minimum of government regulation.” 47 U.S.C. § 230(a)(4).

5. It is the policy of the United States “to preserve the vibrant and competitive free market that presently exists for the Internet” that is “unfettered by Federal or State regulation.” 47 U.S.C. § 230(b)(2).

6. Here, the Defendants conspired to remove from the Internet—a public forum devoted to the marketplace of ideas—valid public health messages and social media posts by Plaintiff, Justin Hart, and others, because they disagreed with the viewpoint and message expressed in such posts on the Internet, which contradicted the federal government’s COVID-19 public health message and views expressed.

7. The Federal Government Defendants (President Biden, Surgeon General Murthy, Flaherty, and Crawford) publicly criticized, exerted pressure, and threatened the Social Media Defendants (Meta Platforms, Inc. and Twitter, Inc.) and other social media platforms for allowing views opposed to the federal government’s COVID-19 public health message to be posted on their platforms that access the Internet.

8. Such coercive, bullying, and intimidating threats and tactics by government officials designed to censor speech through private social media companies have been referred to as illegal jawboning.<sup>1</sup> “The term ‘jawboning’ was first used [during World War II] to describe official speech intended to control the behavior of businessmen and financial markets.”<sup>2</sup>

9. The Ninth Circuit has long recognized the inherent problems associated with illegal jawboning techniques where government officials desired effect is censoring lawful free speech rights under the First Amendment. *See, e.g., Writers Guild of America, West, Inc. v. American Broadcasting Co., Inc.*, 609 F. 2d 355, 365 (9th Cir.1979) (“Regulation through ‘raised eyebrow’ techniques or through forceful jawboning is commonplace in the administrative context, and in some instances may fairly be characterized . . . as official action by the agency.”) (footnotes omitted), *cert. denied*, 449 U.S. 824 (1980); *see Bantam Books, Inc. v. Sullivan*, 372 U.S. 52, 64 (1963) (holding government threats that amount to a censorship scheme violate free speech rights under the First Amendment.); *see also Backpage.com, LLC v. Dart*, 807 F. 3d 229, 231 (7th Cir. 2015) (Posner, J.) (“The First Amendment forbids a public official to attempt to suppress the protected speech of private persons by threatening that legal sanctions will at his urging be imposed unless there is

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<sup>1</sup> See Will Duffield, *Jawboning against Speech: How Government Bullying Shapes the Rules of Social Media*, Policy Analysis no. 934, Cato Institute, Washington D.C. (Sep. 12, 2022), available at <https://www.cato.org/policy-analysis/jawboning-against-speech>.

<sup>2</sup> *Id* at p.2.



1 compliance with his demands.”).

2 10. And in private communications, the Federal Government Defendants held regular  
3 “be-on-the-lookout” warning meetings with the Social Media Defendants and overtly  
4 instructed them on the specific types of so called COVID-19 “disinformation” or  
5 “misinformation” that should be excluded from their platforms and the Internet, regardless  
6 of whether such public posts violated the Social Media Defendants’ terms, conditions, and  
7 policies on “disinformation” or “misinformation.” The Social Media Defendants even  
8 adjusted their policies and algorithms on valid public health messages and acceptable  
9 viewpoints on the Internet to align with the Federal Government Defendants’ pre-approved  
10 COVID-19 public health message and viewpoint.

11 11. The Social Media Defendants removing from the Internet COVID-19 related posts  
12 that opposed or contradicted the Federal Government Defendants’ COVID-19 message—  
13 such as Hart’s posts—violated the Social Media Defendants’ terms, conditions, and policies  
14 on “disinformation” or “misinformation,” because they acquiesced under duress to coercive  
15 pressure from the Federal Government Defendants.

16 12. Some of the Social Media Defendants further acquiesced under duress by giving the  
17 Federal Government Defendants millions of dollars in free advertising on their private  
18 platforms so the government’s COVID-19 public health message would not be challenged  
19 on the Internet, despite the private Social Media Defendants substantially earning their  
20 revenue from third party advertising on their social media platforms.

21 13. The Federal Government Defendants knowingly received a benefit from the Social  
22 Media Defendants excluding from the Internet opposing views to the government’s COVID-  
23 19 public health message such as Hart’s public posts, because the government’s views were  
24 unchallenged and without public scrutiny on the “vibrant and competitive free market that  
25 presently exists for the Internet” in violation of United States policy. 47 U.S.C. § 230(b)(2).

26 14. The Federal Government Defendants also knowingly received a financial benefit  
27 from some of the Social Media Defendants’ financial gifts of millions of dollars in free  
28

1 advertising to promote the government’s COVID-19 public health message, because the  
2 Federal Government Defendants did not have to pay for a service—advertising its COVID-  
3 19 public health message on the Internet—that others who sought and paid for message  
4 advertising on the Internet, such as Hart, were required to pay to the Social Media  
5 Defendants.

6 15. First, Hart brings this action to defend the freedom of speech under the First  
7 Amendment from viewpoint-based, discriminatory collusion between private social media  
8 companies and the federal government, because they jointly removed his COVID-19 social  
9 media posts from the Internet since Hart’s posts contradicted the federal government’s  
10 COVID-19 public health message and views.

11 16. “It is axiomatic that the government may not regulate speech based on its  
12 substantive content or the message it conveys.” *Rosenberger v. Rector & Visitors of the*  
13 *Univ. of Va.*, 515 U.S. 819, 828 (1995). Under the Free Speech Clause of the First  
14 Amendment, “discrimination against speech because of its message is presumed to be  
15 unconstitutional.” *Id.*

16 17. A conspiracy between private and governmental actors satisfies the joint action test  
17 when they have had a “meeting of the minds” to “violate constitutional rights.” *Fonda v.*  
18 *Gray*, 707 F. 2d 435, 438 (9th Cir. 1983). When a government actor has “so far insinuated  
19 itself into a position of interdependence” with private actors it is recognized as a joint  
20 participant in the challenged constitutional deprivation. *See Gorenc v. Salt River Project*  
21 *Agr. Imp. & Power Dist.*, 869 F. 2d 503, 507 (9th Cir. 1989) (quoting *Burton v. Wilmington*  
22 *Parking Auth.*, 365 U.S. 715, 725 (1961)). Such joint action between government and  
23 private parties transforms private actors into state actors. *See Pasadena Republican Club*  
24 *v. W. Justice Ctr.*, 985 F. 3d 1161, 1167 (9th Cir. 2021).

25 18. When the federal government admits to conspiring with social media companies to  
26 censor messages on the Internet with which it disagrees, as it has in this case, both the  
27 government and the private companies are guilty of unconstitutional viewpoint  
28 discrimination: “Joint action exists where the government . . . encourages . . .

1 unconstitutional conduct through its involvement with a private party . . . .” *Ohno v.*  
2 *Yasuma*, 723 F.3d 984, 996 (9th Cir. 2013) (cleaned up). Joint action further occurs when  
3 there is “substantial cooperation” between the private and state actors, or their actions  
4 were “inextricably intertwined.” *Brunette v. Humane Society of Ventura Cnty.*, 294 F. 3d  
5 1205, 1211 (9th Cir. 2002).

6 19. This Court should declare the actions of Defendants Meta Platforms, Inc., f/k/a  
7 Facebook, Inc., Twitter, Inc., President Biden, Surgeon General Murthy, Flaherty, and  
8 Crawford unconstitutional and permanently enjoin them from monitoring, flagging,  
9 censoring, and deleting social media posts on the Internet based on the viewpoints the  
10 posts espouse that contradict the federal government’s pre-approved viewpoint. The Court  
11 should further enjoin the Social Media Defendants from adjusting their policies on  
12 misinformation to align with the Federal Government Defendants’ misinformation policies.

13 20. Second, Defendants Meta Platforms, Inc., f/k/a Facebook, Inc., and Twitter, Inc. are  
14 liable under the doctrine of promissory estoppel for promising Hart the use of their social  
15 media platforms to access the Internet so he could further his business interests and then  
16 rescinding this promise after he relied on them to his detriment.

17 21. Third, Defendant Meta Platforms, Inc., f/k/a Facebook, Inc., is liable to Hart for  
18 intentional interference with a contract for knowingly denying him the ability to fulfill his  
19 contractual duty to administer the Facebook account of Donorbureau, LLC.

20 22. Fourth, Defendant Meta Platforms, Inc., f/k/a Facebook, Inc., is liable to Hart for  
21 negligent interference with a prospective economic advantage for knowingly disrupting the  
22 contractual relationship between Donorbureau, LLC and him by preventing him from  
23 administering the Facebook account of Donorbureau.

24 23. For these reasons, Hart brings this lawsuit and seeks declaratory, injunctive, and  
25 monetary relief for the constitutional deprivation, injuries, and injustices he has suffered  
26 at the hands of the Defendants.

## PARTIES

24. Plaintiff, Justin Hart, is a natural person domiciled in San Diego County, California.

25. Defendant Meta Platforms, Inc., f/k/a Facebook, Inc., (“Facebook”) is a publicly traded corporation incorporated in Delaware with a principal place of business at 1601 Willow Road, Menlo Park, California in San Mateo County.

26. Defendant Twitter, Inc. (“Twitter”) is a publicly traded corporation incorporated in Delaware with a principal place of business at 1355 Market Street, Suite 900, San Francisco, California in the City and County of San Francisco.

27. Defendant Vivek Murthy is sued in his official capacity as the Surgeon General of the United States. In that role, he directs the office of the Surgeon General, a part of the Department of Health and Human Services (“HHS”) agency within the Executive Branch of the federal government.

28. Defendant Joseph R. Biden, Jr. is sued in his official capacity as the President of the United States. In that role, he directs the Executive Branch of the federal government, including the Office of Management and Budget (“OMB”), White House staff, and HHS.

29. Defendant Rob Flaherty is sued in his official capacity as the Deputy Assistant to the President of the United States and Director of Digital Strategy at the White House.

30. Defendant Carol Y. Crawford is sued in her official capacity as Chief of the Digital Media Branch of the Division of Public Affairs within the Centers for Disease Control and Prevention (“CDC”). The CDC is an agency within HHS and the Executive Branch of the federal government.

## JURISDICTION AND VENUE

31. This case raises federal claims under the First Amendment of the United States Constitution; therefore, the Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. § 1331.

32. This Court has jurisdiction to issue injunctive relief to protect constitutional rights. *Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477, 491 n.2 (2010).

33. The Court has jurisdiction to issue declaratory relief pursuant to 28 U.S.C. § 2201 and to order further necessary or proper relief based on a declaratory judgment or decree pursuant to 28 U.S.C. § 2202.

34. The Court has supplemental jurisdiction over the California state law claims pursuant to 28 U.S.C. § 1367.

35. The Court has personal jurisdiction over Defendants Murthy, Biden, Flaherty, and Crawford because they are officers of, or oversee agencies of, the United States.

36. The Court has personal jurisdiction over Defendants Facebook and Twitter because they maintain their principal places of business in California.

37. Venue is appropriate in this district because Facebook and Twitter maintain their principal places of business here and a substantial part of the events giving rising to the claims occurred in this district.

### FACTUAL ALLEGATIONS

#### ***Facebook offered the government \$15 million dollars in free COVID-19 advertising***

38. On February 21, 2021, Payton Iheme, a Facebook employee in charge of U.S. Public Policy at the social media platform, sent an email to Carol Crawford, an employee of the CDC. The CDC is a public health agency within HHS and its employees work with Surgeon General Murthy on public health issues such as COVID-19. A true and correct copy of this email string between Facebook's Iheme and the CDC's Crawford is attached as ***Exhibit 1***.

39. In the email, Facebook employee Iheme offered CDC and the federal government a \$15 million-dollar in-kind donation to allow the government to advertise for free its COVID-19 public health message on Facebook's private platform and the Internet. *Id.*

40. CDC employee Crawford responded to Facebook's offer on the same day, stating, "Thank you for this amazing offer. We'll work with our policy staff on next steps." *Id.*

#### ***The government placed a condition on the \$15 million gift and Facebook accepted***

41. On April 5, 2021, Dia Taylor, CDC's Acting Chief Operating Officer, sent an email to Facebook's Iheme and copied Crawford and other CDC employees. The email contained an attached letter, and true copies of the email and letter are attached hereto as ***Exhibit 2***.

42. In the letter from the CDC to Facebook, the federal government placed a “Publicity and Endorsements” conditional clause on Facebook’s \$15 million gift of free COVID-19 advertising. This clause required Facebook to not use the name of HHS, CDC, or any related federal agencies regarding the federal government’s COVID-19 public health messages to be posted on Facebook and the Internet. *Id.*

43. The “Publicity and Endorsements” clause further required Facebook to “clear all publicity materials for this gift with HHS and CDC to ensure compliance with this paragraph.” *Id.*

44. Facebook acknowledged there was a meeting of the minds by accepting the federal government’s “Publicity and Endorsements” conditional clause, evidenced by Theme’s signature to the letter. Theme then emailed a copy of the signed acceptance letter to the CDC on April 8, 2022. *Id.*

***The government held “Be-on-the-lookout” meetings with social media companies***

45. Beginning in May of 2021, the CDC scheduled regular “be-on-the-lookout” or BOLO meetings with social media platforms, including Facebook and Twitter, and provided detailed and specific instructions on what the government deemed to be COVID-19 disinformation or misinformation and what information the private social media companies should or should not allow on their platforms and on the Internet.

46. On May 6, 2021, the CDC sent an email to Facebook with examples of what COVID-19 messages were inappropriate for the public on private social media platforms and the Internet. Attached as ***Exhibit 3*** is a true and correct copy of this email.

47. On May 14, 2021, the CDC’s Crawford sent an email inviting social media companies including Facebook and Twitter to participate in a BOLO meeting and included a slide presentation related to COVID-19 “Misinformation.” Attached as ***Exhibit 4*** is a true and correct copy of this email along with the COVID-19 slide presentation.

48. On May 28, 2021, the CDC sent an email invitation for a second BOLO meeting with social media platforms including Facebook and Twitter, on COVID-19

1 “Misinformation.” Attached as ***Exhibit 5*** is a true and correct copy of this email along with  
 2 the COVID-19 slide presentation.

3 49. On June 18, 2021, the CDC sent another email invitation for a third BOLO meeting  
 4 with social media platforms including Facebook and Twitter, on COVID-19  
 5 “Misinformation.” Attached as ***Exhibit 6*** is a true and correct copy of this email along with  
 6 the COVID-19 slide presentation.

7 50. These BOLO meetings held in May and June, between the federal government and  
 8 private social media platforms, including Facebook and Twitter, followed a trend that  
 9 began in December of 2020, with the CDC’s Crawford initially emailing Facebook about  
 10 COVID-19 “Misinformation.” Attached as ***Exhibit 7*** is a true and correct copy of this  
 11 December 2020 email, along with a COVID-19 slide presentation.

### 12 ***Deplatforming Justin Hart and removing his posts from the Internet***

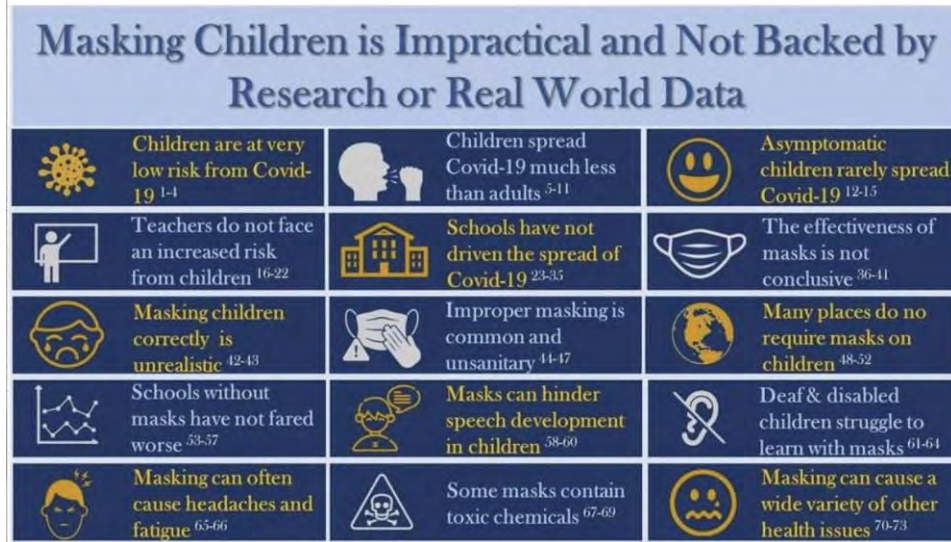
13 51. In early July of 2021, in preparation for the upcoming school year, the CDC updated  
 14 its guidelines and recommended that young children should continue to wear masks at  
 15 school but vaccinated older students and teachers did not need to wear masks.<sup>3</sup>

16 52. Following Facebook’s \$15 million-dollar gift to the federal government, regular  
 17 government BOLO instructional meetings with Facebook and Twitter, and the CDC’s  
 18 updated masking guidelines for children, on or around July 13, 2021, Hart posted to his  
 19 personal Facebook page and on the Internet a graphic entitled, “Masking Children is  
 20 Impractical and Not Backed by Research or Real World Data.”

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 28 <sup>3</sup> <https://www.chalkbeat.org/2021/7/9/22570068/new-cdc-guidance-schools-masks> (last  
 visited Oct. 10, 2022).



53. Below is a photo of the graphic in Hart's post:



54. The graphic Hart posted is science-based, contains footnotes to scientific evidence supporting its claims, and is a valid public health message.

55. Facebook flagged the above post on or around July 13, 2021, with the following notice:

**You can't post or comment for 3 days.**

This is because you previously posted something that didn't follow our Community Standards.

This post goes against our standards on misinformation that could cause physical harm, so only you can see it.

**Learn more about updates to our standards.**

56. On or around July 18, 2021, Hart posted to his personal Twitter page and on the Internet a tweet that read:

So the CDC just reported that 70% of those who came down with #COvId19 symptoms had been wearing a mask. We know that masks don't protect you... but at some point you have to wonder if they are PART of the problem.



57. Although Hart's post stated a valid public health message, Twitter locked Hart's account on or around July 18, 2021, after his post, with the following notice sent to his email:

**Hi Justin Hart,**

**Your Account, @justin\_hart has been locked for violating the Twitter Rules.**

Specifically for: Violating the policy on spreading misleading and potentially harmful information related to COVID-19.

***President Biden, the White House, and Surgeon General Murthy***

58. Within days of these two removals of Hart's posts from the Internet, Defendant Biden's administration revealed publicly that it was directing social media companies to remove posts that bucked their party line on COVID-19.

59. On July 15, 2021, at a White House Press Conference, Defendant Surgeon General Murthy stated, "We're asking [our technology companies] to consistently take action against misinformation super-spreaders on their platforms."<sup>4</sup>

60. The White House revealed that a team of government employees was actively researching and tracking social media posts with which it disagreed and relaying those posts to social media companies with instructions to take them down from the Internet.

61. Former White House Press Secretary Jen Psaki admitted, "We've increased disinformation research and tracking within the Surgeon General's office. We're flagging problematic posts for Facebook that spread disinformation."<sup>5</sup>

62. Psaki also revealed that the White House effort to suppress free speech on the

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<sup>4</sup> Vivek H. Murthy, White House Press Briefing (July 15, 2021), transcript available at <https://www.whitehouse.gov/briefing-room/press-briefings/2021/07/15/press-briefing-by-press-secretary-jen-psaki-and-surgeon-general-dr-vivek-h-murthy-july-15-2021/> (last visited Aug. 18, 2021).

<sup>5</sup> Jen Psaki, White House Press Briefing (July 15, 2021), transcript available at <https://www.whitehouse.gov/briefing-room/press-briefings/2021/07/15/press-briefing-by-press-secretary-jen-psaki-and-surgeon-general-dr-vivek-h-murthy-july-15-2021/> (last visited Aug. 18, 2021).

Internet that contradicted the government’s COVID-19 public health message reaches all the way to the level of senior staff for Defendant Biden’s administration.

63. Psaki gave a glimpse of how the scheme works: “we are in regular touch with these social media platforms, and those engagements typically happen through members of our senior staff, but also members of our COVID-19 team . . . .”<sup>6</sup>

64. Emails confirm Psaki’s public comments. For example, in February and March of 2021, Facebook conducted a survey, shared its survey data with the CDC, and held meetings with government employees to discuss COVID-19 vaccine hesitancy on Facebook’s platform and the Internet. Attached as ***Exhibit 8*** are true and correct copies of emails regarding this communication between Facebook and the CDC.

65. Psaki further revealed in public comments that the far-reaching government effort targeted multiple posts on multiple social media sites and the Internet exclaiming, “You shouldn’t be banned from one platform and not others.”<sup>7</sup>

66. Against United States policy as set forth by Congress “to preserve the vibrant and competitive free market that presently exists for the Internet” that is “unfettered by Federal or State regulation” 47 U.S.C. § 230(b)(2), Defendants Biden and Murthy directed four key changes for social media platforms and the Internet.

67. First, Biden and Murthy directed that private companies “measure and publicly share the impact of misinformation on their platform.”<sup>8</sup>

68. Second, Biden and Murthy directed social media companies to “create a robust enforcement strategy that bridges their properties and provides transparency about the rules.”<sup>9</sup>

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<sup>6</sup> *Id.*

<sup>7</sup> Jen Psaki, White House Press Briefing (July 16, 2021), transcript available at <https://www.whitehouse.gov/briefing-room/press-briefings/2021/07/16/press-briefing-by-press-secretary-jen-psaki-july-16-2021/> (last visited Aug. 18, 2021).

<sup>8</sup> Psaki, *supra* n. 3.

<sup>9</sup> *Id.*

69. Third, Biden and Murthy stressed that “it’s important to take faster action against harmful posts” because “information travels quite quickly on social media platforms; sometimes it’s not accurate. And Facebook needs to move more quickly to remove harmful, violative posts[.]”<sup>10</sup>

70. Fourth, Biden and Murthy directed Facebook to “promote quality information in their feed algorithm.”<sup>11</sup> No definition was provided by Biden and Murthy publicly as to the government’s definition of “quality information.”

71. At the direction of Biden, Murthy created and published a 22-page Advisory with instructions on how social media companies should remove posts with which Murthy and Biden disagree.<sup>12</sup>

72. Biden further threatened social media companies who do not comply with his directives by publicly shaming and humiliating them, stating, “They’re killing people.”<sup>13</sup>

73. Emails between Facebook and the government confirm that Facebook had used its proprietary tool “CrowdTangle” to monitor and report on social media posts that contradicted the federal government’s COVID-19 message and shared such information with the government. Attached as **Exhibit 9** are true and correct copies of emails regarding this communication between Facebook and the CDC regarding CrowdTangle reports.

74. At the direction of the Federal Government Defendants Biden and Murthy, Facebook used CrowdTangle, along with social media algorithms designed to cast a wide net, to remove posts from the Internet that contradicted the government line on COVID-19,

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Vivek H. Murthy, *Confronting Health Misinformation: The U.S. Surgeon General’s Advisory on Building a Healthy Information Environment* (2021), available at <https://www.hhs.gov/sites/default/files/surgeon-general-misinformation-advisory.pdf> (last visited Aug. 18, 2021).

<sup>13</sup> Lauren Egan, “*They’re killing people*”: Biden blames Facebook, other social media for allowing Covid misinformation, NBC News (July 16, 2021, 4:10 PM), available at <https://www.nbcnews.com/politics/white-house/they-re-killing-people-biden-blames-facebook-other-social-media-n1274232> (last visited Aug. 18, 2021).

1 regardless of whether such posts violated Facebook's terms of service.

2 75. For example, in April of 2021, the CDC's Crawford and Facebook's Itheme  
3 communicated via email that the Wyoming Public Health Department notified the federal  
4 government that Facebook's and other platforms' algorithms, intended to screen out  
5 COVID-19 "misinformation," were also screening out "valid" public health messaging,  
6 including social media posts on the Internet by the Wyoming Public Health Department.  
7 Attached as **Exhibit 10** is a true and correct copy of this email communication.

8 76. Like the Wyoming Public Health Department's valid public health message that  
9 was wrongfully removed from the Internet because of social media platforms' adjusted  
10 algorithms, Hart's public Facebook and Twitter posts in July of 2021 were valid public  
11 health messages wrongfully removed from the Internet by algorithms designed jointly by  
12 the Federal Government Defendants and the Social Media Defendants.

13 77. Defendants Biden and Murthy directed Defendants Facebook and Twitter to design  
14 specific algorithms to identify and remove social media posts from the Internet that  
15 contradicted the federal government's COVID-19 public health message and viewpoint. The  
16 Social Media Defendants substantially cooperated with the Federal Government  
17 Defendants' request by designing algorithms that would target viewpoint messages and  
18 posts that contradicted the federal government's COVID-19 public health viewpoint,  
19 resulting in Hart's social media posts being removed from the Internet.

20 78. On July 23, 2021, ten days after Facebook removed Hart's valid public health  
21 message from Facebook's platform and the Internet, Facebook employee Nick Clegg  
22 emailed Defendant Surgeon General Murthy. In the email, Clegg advised Murthy that  
23 Facebook had recently taken steps "to adjust policies on what we are removing for  
24 misinformation." Attached as **Exhibit 11** is a true and correct copy of this email  
25 communication.

26 79. Clegg's tone in his email to Surgeon General Murthy was defensive, and he stated,  
27 "We hear your call for us to do more and, as I said on the call, we're committed to working  
28 toward our shared goal of helping America get on top of this pandemic." *Id.*

80. Clegg continued with his defensive and submissive posture in his email to Defendant Murthy, and he said, “We will reach out directly to DJ to schedule the deeper dive on how to best measure Covid related content and how to proceed with the question around data.” *Id.*

81. On information and belief, “DJ” is not employed by Facebook, does not have authority and control over Facebook’s misinformation policies and terms of service, and “DJ” operates under the authority and control of Murthy, the Executive Branch, and the federal government.

82. Clegg further stated to Murthy, “We’d also like to begin a regular cadence of meetings with your team so that we can continue to update you on our progress.” *Id.* Clegg also noted to Surgeon General Murthy, “You have identified 4 specific recommendations for improvement, and we want to make sure to keep you informed of our work on each.” *Id.*

83. On information and belief, these “4 specific recommendations for improvement” Clegg referred to in his email to Surgeon General Murthy are the same 4 Executive Branch policy recommendations Psaki stated in her July 16, 2021, press briefing. *See supra*, Psaki transcript, n.5.

84. The following month, on August 20, 2021, Clegg sent Murthy a lengthy email because Surgeon General Murthy requested an update. Attached as ***Exhibit 12*** is a true and correct copy of this email communication.

85. In that email, Clegg stated to Defendant Murthy, “You asked for an update on existing and new steps Facebook is taking.” Clegg noted to date that Facebook had removed over 20 million pieces of content for COVID-related misinformation. *Id.*

86. Clegg further stated to Murthy, “In light of our conversation we have been reviewing our efforts to combat COVID-19 and are eager to continue working toward our shared goal of helping more people get vaccinated and limiting the spread of harmful misinformation.” *Id.*

### ***Facebook***

87. Defendant Facebook is one of the most popular social media sites in the world. It

boasts “more than 2.8 billion monthly users worldwide,” who use it for both business and pleasure.<sup>14</sup> Almost 70% of Americans use Facebook in some capacity.<sup>15</sup> Of these users, 70% visit Facebook daily.<sup>16</sup>

88. Facebook’s services involve creating a sort of personal website for its users who can post pictures of themselves and others, create posts on their wall where they can “debate religion and politics with their friends and neighbors or share vacation photos.” *Packingham*, 137 S. Ct. at 1735. These posts are published on the Internet and can also include links to news articles and videos. Other users can post comments on a user’s posts and thereby have a dialogue with one another. Users may also send each other direct messages through Facebook’s Messenger feature.

89. Given this tremendous opportunity to network and speak with other people throughout the United States and even the world on the Internet, users frequently use Facebook to promote their business. “There are over 60 million active business [p]ages” on Facebook.<sup>17</sup> Millions of businesses pay to be active advertisers.<sup>18</sup>

90. Facebook’s hosting of advertisements is very lucrative for it. In 2018, it generated a total of \$55.8 billion in revenue, 99% of which came from ads on Facebook and other platforms that it owns, such as Instagram.<sup>19</sup>

91. On December 31, 2021, the same fiscal year when Facebook made its \$15 million

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<sup>14</sup> John Gramlich, *10 facts about Americans and Facebook*, Pew Research Center (June 1, 2021), available at <https://www.pewresearch.org/fact-tank/2021/06/01/facts-about-americans-and-facebook/> (last visited Aug. 18, 2021).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Kit Smith, *53 Incredible Facebook Statistics and Facts*, Brandwatch (June 1, 2019), available at <https://www.brandwatch.com/blog/facebook-statistics/> (last visited Aug. 18, 2021).

<sup>18</sup> *Id.*

<sup>19</sup> Erin Black, *How Facebook makes money by targeting ads directly to you*, CNBC (Apr. 2, 2019), available at [https://www.cnbc.com/2019/04/02/how-facebook-instagram-whatsapp-and-messenger-make-money.html?\\_\\_source=facebook%7Cmain&fbclid=IwAR05sCPLjY61T3UOfYNvQQZwOiMY64mJsnMQ0Lu4UNYqXkaXa1FUPpn1Huo](https://www.cnbc.com/2019/04/02/how-facebook-instagram-whatsapp-and-messenger-make-money.html?__source=facebook%7Cmain&fbclid=IwAR05sCPLjY61T3UOfYNvQQZwOiMY64mJsnMQ0Lu4UNYqXkaXa1FUPpn1Huo) (last visited Aug. 18, 2021).

1 free advertising donation to the Federal Government Defendants, Facebook filed its Form  
2 10K Annual Report with the Securities and Exchange Commission (“SEC”).<sup>20</sup>

3 92. In its 2021 filed Annual Report with the SEC, Facebook noted: “Substantially all of  
4 our revenue is currently generated from third parties advertising on Facebook and  
5 Instagram.”<sup>21</sup>

6 93. Facebook’s terms of service invite businesses to use its services to “connect with  
7 [other people], build communities, and grow businesses.”<sup>22</sup> Facebook describes its services  
8 as “[e]mpower[ing] you to express yourself and communicate about what matters to you.”<sup>23</sup>

9 94. The terms of service require users to follow Facebook’s “Community Standards.”<sup>24</sup>  
10 Those standards state that Facebook is “a service for more than two billion people to freely  
11 express themselves across countries and cultures and in dozens of languages.”<sup>25</sup> They go on  
12 to state, “To ensure that everyone’s voice is valued, we take great care to craft policies that  
13 are inclusive of different views and beliefs, in particular those of people and communities  
14 that might otherwise be overlooked or marginalized.”<sup>26</sup>

15 95. The limits on this pro-free-speech stance include abstract categories such as  
16 “Violence and Criminal Behavior,” “Safety” (which includes “Suicide and Self-Injury,”  
17 “Child Sexual Exploitation, Abuse, and Nudity,” “Sexual Exploitation of Adults,” “Bullying  
18 and Harassment,” “Human Exploitation,” and “Privacy Violations and Image Privacy  
19 Rights”), “Objectionable Content” (which includes “Hate Speech,” “Violent and Graphic  
20 Content,” “Adult Nudity and Sexual Activity,” and “Sexual Solicitation”), “Integrity and  
21

22 <sup>20</sup> <https://www.sec.gov/Archives/edgar/data/1326801/000132680122000018/fb-20211231.htm>  
23 (last visited Oct. 10, 2022).

24 <sup>21</sup> *Id.* at p. 15.

25 <sup>22</sup> Terms of Service, Facebook, *available at* <https://www.facebook.com/terms.php> (last  
26 revised Oct. 22, 2020) (last visited July 19, 2021).

27 <sup>23</sup> *Id.*

28 <sup>24</sup> *Id.*

<sup>25</sup> Community Standards, Facebook, *available at*  
<https://www.facebook.com/communitystandards/> (last visited July 19, 2021).

<sup>26</sup> *Id.*



Authenticity,” (which includes “Account Integrity and Authentic Identity,” “Spam,” “Cybersecurity,” “Inauthentic Behavior,” “False News,” “Manipulated Media,” and “Memorialization”), and “Respecting Intellectual Property.” For the “False News” sub-category, Facebook states that “we do not remove false news from Facebook but we significantly reduce its distribution by showing it lower in News Feed.”<sup>27</sup>

96. At no point in the terms of service or Community Standards does Facebook prohibit valid public health messages and viewpoints that oppose making children wear masks, such as Hart’s posts.

97. Further, at no point in the terms of service or Community Standards does Facebook mention that it would adjust its policies at or about the same time Hart posted on Facebook in July of 2021, and substantially cooperate with, and follow, Defendants Biden and Murthy’s “4 specific recommendations for improvement” Clegg referred to in his email to Surgeon General Murthy that Psaki mentioned in her July 16, 2021, press briefing.

98. Facebook voluntarily commits itself to be governed by an Oversight Board, which is an independent non-Article III quasi-judicial board that interprets Facebook’s content policies by reviewing content moderation decisions.

99. For example, in March of 2021, shortly before Facebook removed Hart’s valid public health message, the Oversight Board “upheld Facebook’s decision to leave up a post by a state-level medical council in Brazil which claimed that lockdowns are ineffective and had been condemned by the World Health Organization (WHO).”<sup>28</sup>

100. Hart is an executive consultant with over 25 years’ experience creating data-driven solutions for Fortune 500 companies and presidential campaigns alike. He is the Chief Data Analyst and founder of RationalGround.com, which helps companies, public policy officials, and parents gauge the impact of COVID-19 across the country.

101. He has used Facebook’s services since 2007. He has roughly 1,700 Facebook users who follow his account, and roughly 3,000 Facebook friends.

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<sup>27</sup> *Id.*

<sup>28</sup> <https://www.oversightboard.com/decision/FB-B6NGYREK/> (last visited October 20, 2022).



1 102. He uses his Facebook account as a feeder for his other social media accounts, as a  
2 networking tool for his consulting business, and as a promotion for his online website,  
3 RationalGround.com, where he sells subscriptions to his articles and research on COVID-  
4 19 and the government's response to it.

5 103. Given Hart's use of Facebook for his business, he has purchased advertising on  
6 Facebook to promote his consulting business. Over the years, Hart has spent thousands of  
7 dollars on Facebook advertisements and has never been gifted free advertisement from  
8 Facebook as it gifted the Federal Government Defendants.

9 104. Hart has also purchased advertising for his consulting clients over the years,  
10 spending tens of thousands of dollars.

11 105. On his website RationalGround.com Hart offers some of his articles exclusively to  
12 subscribers. His subscriptions generate thousands of dollars per month.

13 106. On April 23, 2021, Facebook restricted Hart's ability to post or comment for 24  
14 hours because it claimed the following three posts violated its Community Standards:

15 a. On or around April 14, 2021, Hart created a post on Facebook  
16 stating, "If you ever want to know where your BLM donation is going – the co-  
17 founder 'trained Marxist' Patrisee Cullars – just bought this amazing home in  
LA" and it included a link to a picture of the house.

18 b. That same day, a second post of his was removed from Facebook.

19 c. On April 23, 2021, he created a post stating: "This is the truth:  
20 Covid is almost gone in America. Hospitals are literally empty. Every willing  
21 senior has already been vaccinated. In a few weeks every willing adult can be...

22 107. Losing the ability to connect with people on the Internet through his Facebook  
23 account has harmed Hart's online business and work to help educate and provide  
24 information to others. He is also suffering injury because he serves as the administrator of  
25 at least one of his client's Facebook pages. While Hart's personal account is suspended, he  
26 cannot service this account.

27 108. Facebook's policies and standards for censorship on its platform and the Internet  
28 are constantly shifting and adjusting in accordance with Defendants Biden and Murthy's

direction on COVID-19 “misinformation” and the federal government’s pre-approved public health message and views allowed on the Internet.

109. For example, since early 2020, there has been widespread debate over whether COVID-19 was made by humans in a lab in Wuhan, China, and escaped from the lab or whether it started naturally through animal-to-human transmission.

110. Despite this public health debate, in February 2020, Facebook announced it would remove posts that suggested the virus was man-made, stating that the theory had been debunked by public health officials.<sup>29</sup>

111. But in May 2021, after Defendant Biden acknowledged the possibility of the theory, Facebook adjusted and reversed its policy to align with Biden’s view and announced that it would no longer remove posts expressing that viewpoint.<sup>30</sup> Therefore, Facebook is stifling the free debate of scientific theories and valide public health messages on the Internet such as Hart’s by taking its directions from the Federal Government Defendants.

### ***Twitter***

112. Defendant Twitter is also a popular social media site; more than one in five adult Americans use the platform.<sup>31</sup> Of these users, 46% visit Twitter daily.<sup>32</sup>

113. Twitter’s services involve creating a personal profile from which its users can “tweet”—meaning post messages, photos, and weblinks to their feed for other users to see. Users can “like”, repost, or reply to other users’ tweets.

<sup>29</sup> Peter Suci, *Social Media About Face: Facebook Won’t Remove Claims Covid Was Man-Made*, Forbes (May 28, 2021, 3:39 PM), available at <https://www.forbes.com/sites/petersuci/2021/05/28/social-media-about-face-facebook-wont-remove-claims-covid-was-man-made/?sh=d21e05c6aa1a> (last visited Aug. 18, 2021).

<sup>30</sup> Donie O’Sullivan & Jordan Valinsky, *Facebook will no longer remove claims that Covid-19 was man-made*, CNN Business (May 27, 2021, 12:16 PM), available at <https://www.cnn.com/2021/05/27/tech/facebook-covid-19-origin-claims-removal/index.html> (last visited Aug. 18, 2021).

<sup>31</sup> Brooke Auxier & Monica Anderson, *Social Media Use in 2021*, Pew Research Center (Apr. 7, 2021), available at <https://www.pewresearch.org/internet/2021/04/07/social-media-use-in-2021/> (last visited July 19, 2021).

<sup>32</sup> *Id.*

1 114. Twitter allows users to have a dialogue on a variety of issues, including topics of  
 2 national importance. 42% of U.S. adults on Twitter say they use the site to discuss  
 3 politics.<sup>33</sup> Twitter is known for being “one of the social media sites with the most news-  
 4 focused users.”<sup>34</sup> 71% of adult Twitter users in the U.S. use the site to get news.<sup>35</sup>

5 115. “The Twitter Rules” proclaim that “Twitter’s purpose is to serve the public  
 6 conversation.”<sup>36</sup>

7 116. The limitations on that “public conversation” include tweets that threaten or  
 8 glorify violence or terrorism, sexually exploit children, abuse or harass other people,  
 9 promote self-harm or suicide, show excessively gory media or adult content within live  
 10 videos or profile photos, or serve any unlawful purpose.<sup>37</sup>

11 117. At no point in the terms of service or Twitter Rules does Twitter prohibit valid  
 12 public health messages and viewpoints that oppose wearing masks. Nor do the terms of  
 13 service or Twitter Rules state that Twitter would have regular BOLO meetings with the  
 14 Federal Government Defendants to get instruction and direction on COVID-19  
 15 “misinformation.”

16 118. Hart has used Twitter’s services since 2007.

17 119. He uses his Twitter account as a feeder for his other social media accounts, as a  
 18 networking tool for his consulting business, and to promote his website  
 19 RationalGround.com, where he sells subscriptions to his articles and research on COVID-  
 20 19 and the government’s response to it.

21  
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 24 <sup>33</sup> Adam Hughes & Stefan Wojcik, *10 facts about Americans and Twitter*, Pew Research  
 25 Center (Aug. 2, 2019), *available at* <https://www.pewresearch.org/fact-tank/2019/08/02/10-facts-about-americans-and-twitter/> (last visited July 19, 2021).

26 <sup>34</sup> *Id.*

27 <sup>35</sup> *Id.*

28 <sup>36</sup> The Twitter Rules, Twitter, *available at* <https://help.twitter.com/en/rules-and-policies/twitter-rules> (last visited Aug. 19, 2021).

<sup>37</sup> *Id.*

120. Hart has purchased ads on Twitter to promote his consulting business. Over the years, he has spent thousands of dollars on Twitter ads. Hart planned to increase his use of Twitter advertising, but Twitter has denied him the ability to do so.

121. Losing the ability to communicate with people through his Twitter account has harmed his online business.

### ***Missouri v. Biden***

122. There is a similar pending case to this case, *State of Missouri v. Biden*, Case No. 3:22-cv-01213-TAD-KDM, in the United States District Court for the Western District of Louisiana, Monroe Division.

123. On October 21, 2022, that court issued a 28-page Memorandum Order Regarding Witness Depositions (“Order”). A copy of the Order is attached as ***Exhibit 13***.

124. In the Order, District Judge Terry A. Doughty explained that plaintiffs’ claims involve allegations of collusion between the federal government and private social media companies to suppress disfavored views and content on social media platforms by labeling such content “dis-information,” “mis-information,” and “mal-information.”

125. The court further determined that expedited discovery and depositions were appropriate for 10 witnesses. Three of the witnesses to be deposed as set forth in the Order are either parties in this case or play a prominent role in the allegations of this case.

126. The three individuals and witnesses relevant to this case with Judge Doughty’s analysis as to why they should submit to depositions and expedited discovery in *State of Missouri v. Biden* are as follows:

- **Jennifer Psaki – Former White House Press Secretary**

127. The *Missouri* court noted that Psaki had made a series of public statements at press conferences in her former role as Press Secretary.

128. Judge Doughty found that Psaki had publicly spoken of pressuring social media companies to censor disfavored views related to COVID-19 misinformation.

129. In ordering her to submit to a deposition, the Court found that “Psaki has made a number of statements that are relevant to the Government’s involvement in a number of

1 social-media platforms' efforts to censor its users across the board for sharing information  
2 related to COVID-19."

3 • **Dr. Vivek Murthy – Surgeon General**

4 130. The court found that Dr. Murthy, a named defendant in this case, had publicly  
5 criticized "tech companies" by asserting that they are responsible for COVID-19 deaths due  
6 to their failure to censor "misinformation."

7 131. And that Murthy also engaged in communications with high-level Facebook  
8 executives about the "demand" for greater censorship of COVID-19 "misinformation."

9 132. Judge Doughty determined that Murthy's actions went beyond the scope of his  
10 rank as Surgeon General. In ordering his deposition, the court found that "Dr. Murthy  
11 made public statements about how the [social] media companies' failure to censor its users  
12 resulted in COVID-19 deaths."

13 • **Carol Y. Crawford – CDC's Chief of the Digital Media Branch**

14 133. The court addressed Crawford's organization of the BOLO meetings referenced  
15 above, which were essentially meetings that attempted to "quell the spread of  
16 misinformation" related to COVID-19.

17 134. In ordering her deposition, the court found that "Crawford organized meetings and  
18 engaged in a number of communications with social-media officials, and the contents of  
19 those meetings and communications are highly important for the issues presented by this  
20 case."

21 135. On November 15, 2022, Crawford submitted to a video deposition. A copy of the  
22 Crawford deposition transcript is attached as ***Exhibit 14***.

23 136. In her deposition, Crawford testified that the federal government had insinuated  
24 itself into a position of interdependence with the Social Media Defendants by holding  
25 regular BOLO meetings to assist them with implementing their misinformation policies on  
26 their private platforms and the Internet.

27 137. For example, Crawford explained this interdependence between the federal  
28 government and Social Media Defendants in her deposition as follows:

1 Q; What's BOLO?

2 A: Be on the lookout.

3 Q. Why were you concerned about this?

4 A. Similar to all the other BOLOs, we still thought it was good to point out if we had facts  
5 around something that was widely circulating as a cause of misinformation to the  
6 platforms to assist them in whatever they were going to do with their policy or not do. And  
7 this was one that was kind of growing, and we had a lot of facts about it, and the team was  
8 concerned about this, this misunderstanding.

9 Crawford Depo., **Exhibit 14**, p. 153-54, Lines 20-26.

10 138. In addition to the three individuals above named in the Order in *Missouri v. Biden*,  
11 emails were produced in discovery in that case from federal government employee Rob  
12 Flaherty to anonymous Facebook officials. Attached hereto as **Exhibit 15** are the  
13 Flaherty emails in and around March of 2021.

14 139. The Flaherty emails were not produced by the federal government to Hart in this  
15 case pursuant to his FOIA claim.

16 140. The Flaherty emails' subject line is, "You are hiding the ball." The Flaherty emails  
17 may be summarized as Flaherty dressing down and admonishing a Facebook official for the  
18 private social media company's lack of transparency to the federal government regarding  
19 vaccine hesitancy and borderline content misinformation allowed to be posted on  
20 Facebook's platform.

21 141. For example, on March 15, 2021, Flaherty writes to this Facebook official and says,  
22 "I will also be the first to acknowledge that borderline content offers no easy solutions. But  
23 we want to know that you are trying, we want to know how we can help, and we want to  
24 know that you are not playing a shell game with us when we ask you what is going on."

25 142. And the anonymous Facebook official responds on behalf of the private social  
26 media company by groveling and asking Flaherty to hold Facebook "accountable."

27 143. For example, on March 15, 2021, the anonymous Facebook official responds to  
28 Flaherty and says, "We obviously have work to do to gain your trust. You mention that you  
are not trying to play "gotcha" with us – I appreciate the approach you are taking to  
continued discussions. We are also working to get you useful information that's on the

level. That's my job and I take it seriously – I'll continue to do it to the best of my ability, and I'll expect you to hold me accountable.”

### ***The Federal Defendants Engaged in Illegal Jawboning***

144. It was not essential for him to perform his duties and make decisions as President of the United States for Biden to direct the Social Media Defendants to employ his 4 recommendations for improvement; design algorithms to target opposing views of the government's COVID-19 message on the Internet; declare publicly they were “killing people;” and to adjust their misinformation policies related to COVID-19.

145. Rather, the desired effect of his actions was a censorship scheme designed to threaten and intimidate the Social Media Defendants so they would censor their users' speech that was in opposition to the federal government's message on COVID-19.

146. It was not essential for him to perform his duties and make decisions as Surgeon General for Murthy to engage in communications with high-level Facebook executives and demand greater censorship of COVID-19 “misinformation;” direct the Social Media Defendants to employ the 4 recommendations for improvement; design algorithms to target opposing views of the government's COVID-19 message on the Internet; and to adjust their misinformation policies related to COVID-19.

147. Rather, the desired effect of his actions was a censorship scheme designed to threaten and intimidate the Social Media Defendants so they would censor their users' speech that was in opposition to the federal government's message on COVID-19.

148. It was not essential for her to perform her duties and make decisions on behalf of the CDC for Crawford to conduct regular BOLO meetings with the Social Media Defendants to assist them with their misinformation policies related to COVID-19; and to negotiate with Facebook for the federal government to receive a \$15 million advertising credit to promote its COVID-19 message on Facebook's platform that accesses the Internet.

149. Rather, the desired effect of her actions was a censorship scheme designed to threaten and intimidate the Social Media Defendants so they would censor their users' speech that was in opposition to the federal government's message on COVID-19.



150. It was not essential for him to perform his duties and make decisions on behalf of the White House for Flaherty to admonish an anonymous Facebook official and demand greater transparency from Facebook and to hold it accountable for COVID-19 “borderline content information” as he defined it that in his view was being posted to Facebook’s private platform and on the Internet.

151. Rather, the desired effect of his actions was a censorship scheme designed to threaten and intimidate Facebook so it would censor its users’ speech that was in opposition to the federal government’s message on COVID-19.

### ***Elon Musk’s public release of the Twitter Files***

152. After purchasing and taking control of Twitter in late Fall of 2022 and firing most of its upper level management and many employees, Elon Musk released a number of internal Twitter documents to various journalists. Referred to as the “Twitter Files,” they were then released to the public and were summarized into 15 Parts.<sup>38</sup>

153. In Part 10 of the summary of the Twitter Files, it was revealed that the United States government pressured Twitter and other social media platforms to elevate certain content and suppress other content about COVID-19.

154. The Twitter Files revealed three serious problems with Twitter’s process related to moderating COVID-19 “misinformation.”<sup>39</sup>

- First, much of the content moderation was conducted by bots, trained on machine learning and AI—impressive in their engineering, yet still too crude for such nuanced work.
- Second, contractors, in places like the Philippines, also moderated content. They were given decision trees to aid in the process, but tasking non experts to adjudicate tweets on complex topics like myocarditis and mask efficacy data was destined for a significant error rate.
- Third, most importantly, the buck stopped with higher level employees at Twitter who chose the inputs for the bots and decision trees, and

<sup>38</sup> See [The Twitter Files Parts 1-15: A Comprehensive Summary, Analysis, and Discussion of Ramifications for American Institutions \(updated 1.19.23\) – Stopping Socialism](https://stoppingsocialism.com/2023/01/the-twitter-files-comprehensive-summary-analysis-and-discussion-of-ramifications-for-american-institutions/), available at <https://stoppingsocialism.com/2023/01/the-twitter-files-comprehensive-summary-analysis-and-discussion-of-ramifications-for-american-institutions/>

<sup>39</sup> See *id.* at Part 10.



subjectively decided escalated cases and suspensions. As it is with all people and institutions, there was individual and collective bias. With Covid, this bias bent heavily toward establishment dogmas.

155. And the Twitter Files revealed that on September 3, 2021, former FDA commissioner and Pfizer board member Dr. Scott Gottlieb, contacted Todd O’Boyle, a top lobbyist in Twitter’s Washington office and the White House’s Twitter point of contact. Gottlieb complained to O’Boyle about a tweet from Justin Hart, known to be a “lockdown and Covid vaccine skeptic with more than 100,000 Twitter followers.”<sup>40</sup>

### COUNT I – Free Speech

**Murthy, Biden, Crawford, Flaherty, Facebook, and Twitter violated the Free Speech clause of the First Amendment when they acted jointly to remove Hart’s social media posts from the Internet and block him from using his accounts.**

156. The allegations in the preceding paragraphs are incorporated herein by reference.

157. “The First Amendment is a kind of Equal Protection Clause for ideas.” *Barr v. Am. Ass’n of Political Consultants*, 140 S. Ct. 2335, 2354 (2020) (plurality). A government violates this promise of equal treatment for ideas when it engages in viewpoint discrimination. *Rosenberger*, 515 U.S. at 819.

158. Murthy, Biden, Crawford, and Flaherty knowingly engaged in viewpoint discrimination when they directed Facebook and Twitter to remove from the Internet social media posts and valid public health messages like those of Hart’s that contained a viewpoint on COVID-19 that did not fit with their own political public health narrative.

159. Murthy, Biden, Crawford, and Flaherty further knowingly engaged in viewpoint discrimination against Hart when they and Executive Branch officials (1) directed Facebook and Twitter representatives to employ the federal government’s “4 specific recommendations for improvement;” (2) held BOLO meetings with Facebook and Twitter representatives to target opposing public health messages on the Internet; (3) directed the Social Media Defendants to design algorithms to specifically target valid public health messages on the Internet opposing the government’s COVID-19 views resulting in 20

<sup>40</sup> See *id.* at Part 13.

1 million pieces of content being removed from platforms and the Internet, including Hart's  
2 valid public health messages; (4) directed Facebook to adjust its policies regarding COVID-  
3 19 "misinformation" on the Internet at or about the time of Hart's valid public health  
4 message; and (5) negotiated and received a \$15 million advertising credit from Facebook to  
5 advertise the government's unchallenged COVID-19 public health message on the Internet  
6 shortly before Hart's valid public messages were removed.

7 160. Murthy, Biden, Crawford, and Flaherty's unconstitutional viewpoint  
8 discrimination acts that deprived Hart of his First Amendment rights were further  
9 contrary to the policy of the United States "to preserve the vibrant and competitive free  
10 market that presently exists for the Internet" that is "unfettered by Federal or State  
11 regulation." 47 U.S.C. § 230(b)(2).

12 161. Private companies engage in state action when they jointly work with government  
13 officials to deprive individuals of their constitutional rights. *Lugar v. Edmondson Oil Co.*,  
14 457 U.S. 922, 942 (1982).

15 162. "The Supreme Court has articulated four tests for determining whether a non-  
16 governmental person's actions amount to state action: (1) the public function test; (2) the  
17 joint action test; (3) the state compulsion test; and (4) the governmental nexus test." *Ohno*,  
18 723 F.3d at 995.

19 163. "Joint action exists where the government affirms, authorizes, encourages, or  
20 facilitates unconstitutional conduct through its involvement with a private party." *Id.* at  
21 996.

22 164. The Ninth Circuit finds joint action when "state officials and private parties have  
23 acted in concert in effecting a particular deprivation of constitutional rights." *Tsao v.*  
24 *Desert Palace, Inc.*, 698 F.3d 1128, 1140 (9th Cir. 2012) (cleaned up). "This requirement can  
25 be satisfied either by proving the existence of a conspiracy or by showing that the private  
26 party was a willful participant in joint action with the State or its agents." *Id.*

1 165. And threats from government officials that amount to a censorship scheme violate  
2 the First Amendment. *See Bantam Books*, 372 U.S. at 64; *Writers Guild of America*, 609 F.  
3 2d at 365.

4 166. “Particularly relevant here is the maxim that if the state knowingly accepts the  
5 benefits derived from unconstitutional behavior, then the conduct can be treated as state  
6 action.” *Tsao*, 698 F.3d at 1140.

7 167. Facebook and Twitter engaged in state action when they removed valid public  
8 health messages and posts like Hart’s from their platforms and the Internet at the request  
9 of Murthy, Biden, Crawford, and Flaherty based on the viewpoint of those posts on COVID-  
10 19 that differed from the public health message of the federal government.

11 168. Facebook and Twitter worked in concert, substantially cooperated with, and/or  
12 conspired with Murthy, Biden, Crawford, and Flaherty to deprive Hart of his First  
13 Amendment right to free speech to post valid public health messages on the Internet.

14 169. Murthy, Biden, Crawford, and Flaherty affirmed, authorized, encouraged, and/or  
15 facilitated Facebook and Twitter’s unconstitutional conduct of censorship of Hart’s posts  
16 and valid public health messages on the Internet.

17 170. Facebook and Twitter either were willful participants when they removed Hart’s  
18 posts from the Internet based on his viewpoint at the direction of Murthy, Biden, Crawford,  
19 and Flaherty or were subject to government compulsion, either of which makes the removal  
20 of the posts state action and transforms Facebook and Twitter into state actors.

21 171. Murthy, Biden, Crawford, and Flaherty knowingly accepted the benefits of  
22 censored speech derived from the unconstitutional behavior of Facebook and Twitter in  
23 removing posts from the Internet based on a valid COVID-19 public health viewpoint with  
24 which Murthy, Biden, Crawford, and Flaherty disagreed.

25 172. Further, Murthy, Biden, Crawford, Flaherty, and Executive Branch officials  
26 knowingly accepted the benefits of \$15 million in advertising credit from Facebook to  
27 promote the federal government’s unchallenged public health COVID-19 viewpoint and  
28

1 message on the Internet, a public forum Congress intended to be a marketplace of ideas  
2 free from government regulation.

3 173. Although Hart remains active on Facebook and Twitter in an attempt to rebuild  
4 his brand and continue to post valid public health messages, Facebook and Twitter now  
5 require that Hart and other users in the future express a government-approved viewpoint  
6 to use their platforms that reach the Internet and that are subject to the COVID-19 public  
7 health policies and control of the federal government, and such posts that reach the  
8 Internet are no longer subject to the Social Media Defendants' policies.

9 174. Further, Facebook adjusts and deviates from its voluntary submission to its  
10 independent Oversight Board on COVID-19 public health misinformation and instead  
11 follows the direction of Murthy, Biden, Crawford, and Flaherty's recommendations.

12 175. Hart is entitled to declaratory and injunctive relief against Murthy, Biden,  
13 Crawford, and Flaherty for violating his right to free speech on the Internet under the  
14 First Amendment and to stop them from directing Facebook and Twitter to utilize the  
15 federal government's policies on what constitutes COVID-19 "misinformation" on their  
16 platforms and Internet.

17 176. Hart is entitled to declaratory and injunctive relief as well as compensatory and  
18 nominal damages from Facebook and Twitter for violating his right to free speech on the  
19 Internet under the First Amendment and to stop them from adjusting their algorithms and  
20 policies to align with the federal government's COVID-19 "misinformation" policies.

## 21 **COUNT II - Promissory Estoppel**

22 **Facebook and Twitter committed promissory estoppel by not fulfilling their**  
23 **promise to Hart to use their social media platforms to reach an audience on the**  
24 **Internet in furtherance of his business.**

25 177. The allegations in the preceding paragraphs are incorporated herein by reference.

26 178. Facebook and Twitter made "a clear and unambiguous promise" to Hart that he  
27 could use their services to communicate and network with other Facebook and Twitter  
28

1 users on the Internet. *Bushell v. JPMorgan Chase Bank, N.A.*, 163 Cal. Rptr. 3d 539, 550  
2 (Cal. Ct. App. 2013).

3 179. In making this promise, Facebook and Twitter did not include a provision that  
4 they would censor speech on the Internet opposing masks at the direction of the federal  
5 government.

6 180. Hart engaged in “reasonable, foreseeable and detrimental reliance” on Facebook’s  
7 and Twitter’s promise when he started using their services to speak with and network with  
8 other Facebook and Twitter users on the Internet to promote his business. *Bushell*, 163  
9 Cal. Rptr. 3d at 550.

10 181. Hart engaged in “reasonable, foreseeable and detrimental reliance” on Facebook’s  
11 promise when he invested substantial sums of money to advertise on Facebook and Twitter  
12 and their platforms that reach an audience on the Internet. *Id.*

13 182. Facebook’s and Twitter’s removal from the Internet and flagging of Hart’s posts  
14 and suspension of his account for engaging in speech caused his reliance on their promises  
15 to be to the detriment of his business, finances, and reputation.

16 183. As the result of this detrimental reliance, Hart suffered monetary and non-  
17 monetary damages.

18 184. Hart is entitled to monetary relief from Facebook and Twitter for committing the  
19 tort of promissory estoppel.

### 20 **COUNT III - Intentional Interference with a Contract**

21 **Facebook committed intentional interference with a contract by interfering with**  
22 **Hart’s contract with Donorbureau, LLC.**

23 185. The allegations in the preceding paragraphs are incorporated herein by reference.

24 186. To establish a claim of intentional interference with a contractual relationship, the  
25 claimant must show (1) a valid contract between claimant and a third party; (2) defendant’s  
26 knowledge of this contract; (3) defendant’s intentional acts designed to induce a breach or  
27 disruption of the contractual relationship; (4) actual breach or disruption of the contractual  
28

relationship; and (5) resulting damage. *Davis v. Nadrich*, 94 Cal. Rptr. 3d 414, 421 (Cal. Ct. App. 2009).

187. California law does not require that the defendant act with the specific intent to interfere. *See id.* at 422; *Quelimane Co. v. Stewart Title Guaranty Co.*, 960 P.2d 513 (1998). The tort is applicable if the defendant knows that the interference is substantially certain or certain to happen as a result of defendant's actions. *Nadrich*, 94 Cal. Rptr. 3d at 422.

188. Hart maintains a valid employment contract with Donorbureau, LLC ("Donorbureau"), a Virginia-based limited liability company.

189. As part of his employment contract, Hart's job duties include serving as an Administrator on the Donorbureau Facebook account, so he can post content to the site and make other changes in an effort to increase Donorbureau's revenue.

190. Facebook has knowledge of the relationship between Hart and Donorbureau because it has actual notice that Hart serves as an Administrator for the Donorbureau account.

191. Facebook intentionally suspended Hart's use of his personal Facebook account and removed his posts from the Internet, and Facebook knew and intended that such action would prevent Hart from doing his work as an Administrator on the Donorbureau account.

192. Therefore, Facebook intentionally interfered with Hart's contract with Donorbureau.

193. Not being able to service Donorbureau's Facebook page placed Hart in breach of his contract with Donorbureau.

194. Hart suffered and is suffering monetary damage for not being able to fulfill his social media duties to Donorbureau.

195. Hart is entitled to monetary relief from Facebook for intentionally interfering with his contract with Donorbureau.

#### **COUNT IV - Negligent Interference with a Prospective Economic Advantage**

**Facebook committed negligent interference with a prospective economic advantage by interfering with Hart's contract with Donorbureau, LLC.**

196. The allegations in the preceding paragraphs are incorporated herein by reference.

1 197. To establish a claim of negligent interference with a prospective economic  
2 advantage, a claimant must show (1) the existence of a valid contractual relationship  
3 between the plaintiff and a third party containing the probability of future economic  
4 benefit to the plaintiff; (2) the defendant's knowledge, actual or construed, of the  
5 relationship; (3) the defendant's knowledge, actual or construed, that the relationship  
6 would be disrupted if the defendant failed to act with reasonable care; (4) the defendant's  
7 failure to act with reasonable care; (5) actual disruption of the relationship; and (6)  
8 resulting economic harm. *Nelson v. Tucker Ellis, LLP*, 262 Cal. Rptr. 3d 250, 264 n.5 (Cal.  
9 App. Ct. 2020).

10 198. Hart maintains a valid employment contract with Donorbureau, LLC, a Virginia-  
11 based limited liability company.

12 199. As part of his employment contract, Hart's job duties include serving as an  
13 Administrator on the Donorbureau Facebook account, so he can post content to the site and  
14 make other changes in an effort to increase Donorbureau's revenue.

15 200. Hart has a probability of future economic benefit by fulfilling the terms of his  
16 employment contract with Donorbureau.

17 201. Facebook has knowledge of the relationship between Hart and Donorbureau  
18 because it has actual notice that Hart serves as an Administrator for the Donorbureau  
19 account.

20 202. When Facebook suspended Hart's use of his personal Facebook account and  
21 removed his posts from the Internet, it knew or should have known that Hart's work as an  
22 Administrator on the Donorbureau account and his relationship with Donorbureau would  
23 be disrupted as a result of its negligent actions.

24 203. In not providing Hart any avenue to access the Donorbureau account, Facebook  
25 failed to act with reasonable care.

26 204. Facebook's act of suspension caused an actual disruption in the relationship  
27 between Hart and Donorbureau because he could not post content to the site or on the  
28 Internet or make other changes in his work to increase Donorbureau's revenue.



205. Therefore, Facebook negligently interfered with Hart's prospective economic advantage from his contractual relationship with Donorbureau.

206. Hart suffered and is suffering monetary damage for not being able to fulfill his social media duties to Donorbureau.

207. Hart is entitled to monetary relief from Facebook for negligently interfering with the prospective economic advantage resulting from his contract with Donorbureau.

### **PRAYER FOR RELIEF**

Plaintiff Justin Hart respectfully requests that this Court enter judgment in his favor on every claim set forth above and award him the following relief:

A. Declare that the actions of Murthy, Biden, Crawford, Flaherty, Facebook, and Twitter constitute a violation of the Free Speech Clause of the First Amendment by denying Hart the ability to speak on the Internet through the private social media platforms of Facebook and Twitter;

B. Enjoin Murthy, Biden, Crawford, and Flaherty from directing in the future social media companies such as the Social Media Defendants to censor information and speech on platforms and the Internet with which Murthy, Biden, Crawford, and Flaherty disagree;

C. Enjoin Facebook and Twitter from removing in the future Hart's posts from the Internet or suspending his posts at the direction of Murthy, Biden, Crawford, and Flaherty or based on the federal government's "misinformation" policies;

D. Enjoin Murthy, Biden, Crawford, and Flaherty from directing social media companies such as the Social Media Defendants from censoring speech in the future;

E. Award Hart compensatory damages in the amount of his past, present, and future lost income resulting from Facebook's and Twitter's actions of promissory estoppel and resulting from Facebook's intentional interference with a contract and negligent interference with a prospective economic advantage;

F. Award Hart compensatory damages in the amount of a return of the money he spent on Facebook and Twitter advertisements because of Facebook's and Twitter's actions of



promissory estoppel and Facebook's intentional interference with a contract and negligent interference with a prospective economic advantage;

G. Award Hart compensatory damages in an amount to fully compensate him for the time he spent building a following on the Internet through Facebook and Twitter that has now been wasted by Facebook's and Twitter's actions of promissory estoppel and Facebook's intentional interference with a contract and negligent interference with a prospective economic advantage;

H. Award Hart compensatory damages in the amount of the harm to his reputation on the Internet resulting from Facebook's and Twitter's actions of promissory estoppel and resulting from Facebook's intentional interference with a contract and negligent interference with a prospective economic advantage; and

I. Award any further relief to which Hart may be entitled, including reasonable attorneys' fees and costs.

Dated: February 15, 2023

Respectfully submitted,

s/ Daniel Suhr

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# EXHIBIT B

13 THE VIDEOTAPED DEPOSITION OF CAROL CRAWFORD  
14 November 15, 2022  
15 9:24 a.m. to 5:33 p.m.

Reporter:  
20 Maureen S. Kreimer, CCR-B-1379, CRR

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| 5  | DESCRIPTION OF EXHIBITS            |   |      |
| 6  | Plaintiffs'                        |   |      |
| 6  | EXHIBIT                            | DESCRIPTION   | PAGE |
| 7  | Exhibit 1                          | Deposition Notice for Carol Crawford  | 21   |
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| 11 | Exhibit 3                          | Emails ending 3/5/20 Facebook's COVID-19 Response Efforts                         | 33   |
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| 13 | Exhibit 4                          | Emails ending 3/31/20 CDC brief on ways to reach high-risk and frequent travelers | 38   |
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| 15 | Exhibit 5                          | Emails ending 3/30/20 CDC brief on ways to reach high-risk and frequent travelers | 43   |
| 16 |                                    | MOLA_DEFSPROD_00015018--19  |      |
| 17 | Exhibit 6                          | Emails ending 1/26/21 CrowdTangle COVID-19 reports for WHO                        | 49   |
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| 21 | Exhibit 8                          | Emails ending 3/31/21 re: This week's meeting                                     | 67   |
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| 4  | Exhibit 11 | Emails ending 5/20/21 Agenda item for CDC call this week  | 102 |
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| 6  | Exhibit 12 | Lancet April 2021 article. Bell's palsy and SARS-CoV-2 vaccines   | 112 |
| 7  | Exhibit 13 | Lancet September 2021 article   | 112 |
| 8  |            | Bell's palsy and SARS-CoV-2 vaccines - an unfolding story   |     |
| 9  | Exhibit 14 | Document titled Infection fatality rate of COVID-19 in community-dwelling populations with emphasis on the elderly: An overview | 113 |
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| 20 | Exhibit 20 | Emails ending 8/19/21 VAERS talking points 8.15_AH_PM_CLEAN COPY.docx   | 150 |
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| 5  | Exhibit 23 | Emails ending 11/8/21 New Claims & Policy updates following EAU authorization for 5-11 year olds | 163 |
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| 7  | Exhibit 24 | Bloomberg article Frequent Boosters Spur Warning on Immune Response                              | 164 |
| 8  |            |  |     |
| 9  | Exhibit 26 | Emails ending 2/3/22 Vaccine Misinformation Questions for CDC                                    | 166 |
| 10 |            | MOLA-DEFSPROD_00001683-1686  |     |
| 11 | Exhibit 27 | Emails ending 2/4/22 Have 5 minutes to chat? MOLA-DEFSPROD_00001677                              | 171 |
| 12 | Exhibit 28 | Emails ending 3/23/21 COVID misinfo project MOLA-DEFSPROD_00003130-31                            | 173 |
| 13 | Exhibit 29 | Emails ending 4/5/21 Followup on mis-info conversation   | 179 |
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| 15 | Exhibit 30 | Emails ending 4/12/21 Followup on mis-info conversation  | 187 |
| 16 |            | MOLA-DEFSPROD_00002936   |     |
| 17 | Exhibit 31 | Emails ending 12/21/21 Omicron page  | 188 |
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| 3  | Exhibit 35 | 9/3/21 Email BOLO: CDC lab alert & misinformation                 | 219 |
| 4  |            | MOLA-DEFSPROD_00002200  |     |
| 5  | Exhibit 36 | Emails ending 4/15/21 Call or VC - Facebook weekly sync with CDC  | 221 |
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| 7  | Exhibit 37 | Emails ending 4/29/21 CDC Guides and this week's meeting          | 226 |
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| 9  | Exhibit 38 | Emails ending 4/30/21 WY issue                                    | 237 |
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| 15 | Exhibit 41 | Emails ending 6/10/21 CDC COVID_19 BOLO Meeting                   | 247 |
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| 18 |            | MOLA_DEFSPROD_00001827-29   |     |
| 19 | Exhibit 43 | 6/29/22 email Claims review                                       | 254 |
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(REPORTER'S NOTE: Original Plaintiffs' Exhibits 1 through 24 and 26 through 44 have been attached to the original deposition transcript.)

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**Page 6**

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6 On behalf of the Plaintiffs Dr. Jayanta Bhattacharya,  
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25 (Continued next page)

**CAROL CRAWFORD 11/15/2022**

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7  
Melissa Thombley, Esq (via Zoom)  
8 U.S. Department of Health and Human  
9 Services

10

11 Joseph Foster, Esq. (via Zoom)  
12 Centers for Disease Control & Prevention

13

14 Legal videographer: Jason Silling, Lexitas Legal

15

16 - - -

17

18

19 (Pursuant to Article 10(B) of the Rules and  
20 Regulations of the Georgia Board of Court Reporting,  
21 disclosure was presented to all counsel present at  
22 the proceeding and a written copy is attached  
23 hereto.)

24

25

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1 THE VIDEOGRAPHER: We are on the record.

2 Today's date is November 15, 2022. The time is  
3 9:24. This is the video-recorded deposition of  
4 Carol Crawford in the matter of the State of  
5 Missouri versus Joseph R. Biden in the U.S. District  
6 Court for the Western District of Louisiana.

7 This deposition is being held at the CDC.  
8 The reporter's name is Maureen Kreimer. My name is  
9 Jason Silling. I am the legal videographer. We are  
10 with Lexitas Legal. Would the attorneys present  
11 please introduce themselves and the parties they  
12 represent.

13 MR. VECCHIONE: I am John Vecchione. I  
14 represent the individual plaintiffs Jay  
15 Bhattacharya, Aaron Kheriaty, and Jill Hines and  
16 Martin Kulldorff.

17 MS. SNOW: My name is Kyla Snow. I'm with  
18 the Department of Justice representing the  
19 defendants in this case. And defendants reserve  
20 their right to review, read, review and sign the  
21 transcript.

22 MR. GILLIGAN: James Gilligan, also with  
23 the Department of Justice representing the  
24 defendants.

25 MR. KUMAR: Anant Kumar with the Office of

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1 General Counsel in HHS, and I also represent the  
2 defendant. I represent the HHS defendants.

3 THE VIDEOGRAPHER: Would the court  
4 reporter please swear in the witness.

5 CAROL CRAWFORD,  
6 having been first duly sworn, was examined and  
7 testified as follows:

8 REPORTER: You can begin, Counsel.

9 THE VIDEOGRAPHER: You may proceed.

10 EXAMINATION

11 BY MR. VECCHIONE:

12 Q. Good morning, Ms. Crawford. Have you ever  
13 been deposed before?

14 A. No, I have not.

15 Q. All right. So I'm going to lay out some  
16 ground rules. We have to -- the court reporter and  
17 everything else can only pick up verbal cues. In  
18 normal conversation, we nod our heads like you're  
19 doing now and all that, but for the record we have  
20 to say things out loud. And that also, to keep a  
21 clear record, we have to try not to talk over each  
22 other. And that's really something the lawyers, we  
23 say to the lawyers, because they're the ones who  
24 interrupt, not the witness. But keep that in mind.

25 If you don't -- I will be asking

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1 questions. If you don't understand the question,  
2 you can ask me to rephrase, or say you don't  
3 understand. Don't answer a question that you think  
4 you don't understand. If during the course of this,  
5 your counsel -- which of you is defending this one?  
6 You're going to defend it?

7 MS. SNOW: Yes.

8 BY MR. VECCHIOINE:

9 Q. So your counsel will make objections.  
10 Wait for the objections to fade, and then answer the  
11 question unless I rephrase or something like that,  
12 unless she instructs you not to answer.

13 Let's see. So do you agree with all that?  
14 Do you understand the process?

15 A. I understand. Could you speak up a  
16 little, though? It's hard for me to hear you.

17 Q. I can. You know what, I didn't turn on  
18 this. I was dealing with the other mic that I have  
19 on my tie.

20 A. Thank you.

21 Q. But in any event, so.

22 All right. Are you taking any  
23 medications, or do you have any condition that would  
24 impact your ability to testify truthfully today?

25 A. No.

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1           **Q. All right. For the record please state**  
2   **your name.**

3           A. Carol Young Crawford.

4           **Q. And what's your current employment?**

5           A. I work for the CDC.

6           **Q. What's your title?**

7           A. I am the division director for the  
8   division of Digital Media within the CDC Office of  
9   the Associate Director for Communication, which we  
10   call OADC.

11          **Q. Give me the term again. Office of?**

12          A. The Associate Director for Communication.

13          **Q. And what are your duties in that role?**

14          A. Our division provides leadership for CDC's  
15   web presence. We provide leadership for CDC's  
16   social media presence. We have -- we lead the  
17   development operations of CDC's 800-number, which is  
18   our Contact Center. We also provide graphics and  
19   visual design services for the Agency.

20          **Q. And what do you do?**

21          A. I'm the director of that work. I  
22   determine strategy, objectives, oversee work.

23          **Q. Do you have any -- well, why don't we**  
24   **start. Go back a little bit.**

25                **Could you briefly outline your education**



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1     **and employment history up until now?**

2             A. Yes. I started work at CDC when I was 18.  
3     So I have been here 34 years. I went to school -- I  
4     have a bachelor's in business and a master's in  
5     public administration, and I have been working at  
6     CDC within digital communications, web, social  
7     media, for really as long as those things existed at  
8     CDC.

9             **Q. And where are your degrees from?**

10            A. University of -- the University of Georgia  
11     for the master's, Georgia State for the bachelor.

12            **Q. Okay. So have you always been at CDC here**  
13     **in Atlanta?**

14            A. Yes.

15            **Q. Did you have any back- -- do you have any**  
16     **background in medicine, sciences, or epidemiology?**

17            A. No.

18            **Q. And is there anything else about the role**  
19     **of the division of Public Affairs' place within CDC**  
20     **that you haven't told me? Is there anything --**

21            A. Can you repeat?

22            **Q. Yeah. You have told me a little bit about**  
23     **what the division of Public Affairs does, I believe,**  
24     **or was that only what OADC does?**

25            A. I was referring to the division of Digital

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1 Media.

2 Q. Okay.

3 A. Which was created in April of 2022. Or  
4 maybe March 2022. Sorry.

5 Q. On or about, as we say.

6 A. Yes.

7 Q. Now -- well, let's go back to that, the  
8 division. The division of Public Affairs, you're  
9 within that at the CDC?

10 A. There is no division of Public Affairs in  
11 OADC any longer.

12 Q. What happened there?

13 A. The reorganization of OADC occurred in  
14 March or April of 2022, and there's -- that division  
15 does not exist anymore.

16 Q. Prior to this changeover what did that  
17 division do?

18 A. The division had three branches. The  
19 division -- I mean, the branch of Digital Media,  
20 where I was, the branch for News Media, and a branch  
21 for Employee Communications.

22 Q. And then what did the reorganization do  
23 with each of those three? Where did they go?

24 A. The -- well, Digital Media became the  
25 division of Digital Media, and parts from other

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1 divisions came to join the work that we were already  
2 doing such as the Contact Center, and the Graphics,  
3 and that was new to my organization. The News Media  
4 group is now a branch in the division of News Media,  
5 I believe. I'm sorry.

6 **Q. That's your understanding?**

7 A. Yes. And then they have a Broadcast group  
8 with them. And the Employee Communication group is  
9 now an office in the OD of the OADC. That was the  
10 other component of the Public Affairs group that you  
11 asked about.

12 **Q. Okay. So the Digital Media branch now --**  
13 **so I understand. I'm not sure I got all that. Who**  
14 **did that before? Was that only in the Digital Media**  
15 **section of the three you've told me, or was there**  
16 **overlap?**

17 A. Well, there is no Digital Media branch  
18 now.

19 **Q. Okay.**

20 A. There is now a division of Digital Media.

21 **Q. Okay.**

22 A. You may have to reask the second part of  
23 your question.

24 **Q. Okay. Now it's the division of Digital**  
25 **Media. Who had that -- what was the name of the**

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1     **organization that had that role before April of**  
2     **March of 2022?**

3             A. I was the branch chief of the Digital  
4     Media Branch within the Division of Public Affairs,  
5     and most of the roles that our division currently  
6     performs, web and social media, were in that branch.

7             **Q. Thank you. Did anyone else have overlap**  
8     **before?**

9             A. No.

10            **Q. All right. So what is the current duty of**  
11    **the Division of Digital Media?**

12            A. The current?

13            **Q. Duties?**

14            A. Of the division of Digital Media? We  
15    provide leadership for CDC's website. We provide  
16    leadership for CDC's social media efforts. We  
17    provide graphic support for the entire agency, and  
18    we manage the 800-number, the Contact Center.

19            **Q. Okay. And what's -- what is leadership;**  
20    **when you use that word, what do you mean?**

21            A. We, for web, for example, we convene a web  
22    council with people across CDC to manage the  
23    governance of the website. We manage the web  
24    content management system. We draft policies and  
25    guidelines around it.

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1 Q. In your current role since April or March  
2 of 2022 --

3 A. Mm-hmm (affirmative).

4 Q. -- have you had any contact with major  
5 technology companies such as Twitter, Facebook,  
6 LinkedIn, Microsoft or Google?

7 A. Yes.

8 Q. In your previous role before the  
9 reorganization, did you have such contacts?

10 A. Yes.

11 Q. Generally what type of contacts are those  
12 when you started them?

13 A. We started regular contact with the groups  
14 at the beginning of the COVID outbreak to exchange  
15 information about COVID, and most of the contact  
16 since then has been around COVID or other  
17 high-priority things, but mostly COVID.

18 Q. Okay. Let's get some timeline down. Is  
19 the beginning of COVID, would you think, February or  
20 March of 2019?

21 A. 2020.

22 Q. 2020. Excuse me.

23 A. Yes.

24 Q. Okay. For our purposes. All right.

25 A. Mm-hmm (affirmative).

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1           **Q. So before that, social media had been**  
2   **around for a while, I mean, but did -- you didn't**  
3   **have contact with them before COVID?**

4           A. I had periodic occasional contact with the  
5   platforms, depending on maybe they would reach out  
6   to CDC for something, or we would be trying to reach  
7   out to them for assistance with something. I didn't  
8   have regular meetings. They were -- they were very  
9   occasional.

10          **Q. All right. COVID hits, let's say, early**  
11   **spring of 2020.**

12          A. Mm-hmm (affirmative).

13          **Q. How did you instigate contact with these**  
14   **systems? Generally, I'm speaking. I know there may**  
15   **be some differences, but generally how did you**  
16   **initially instigate contacts with them?**

17          A. I don't recall who initiated contact.

18          **Q. Does that mean you don't know who within**  
19   **CDC, or does that mean you don't know if they called**  
20   **you?**

21          A. I don't recall if they called us first, or  
22   we called them first. It could have differed also  
23   depending on the platform.

24          **Q. From media company to media company?**

25          A. There was a lot going on at that time, so.

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1           **Q. Do you have a present recollection of when**  
2     **you first spoke to any media platform about COVID,**  
3     **or email, when I say -- had communications with?**

4           A. I believe, my recollection is, is that we  
5     started talking to some of them in February and  
6     March of 2020.

7           **Q. And what was the nature of the**  
8     **discussions?**

9           A. My memory of our first interactions were  
10    around getting out CDC-credible information. For  
11    instance, I know Facebook was looking at making it  
12    easier to find COVID information from the CDC and  
13    WHO on a platform, and they wanted to use our public  
14    domain content and they were similar in  
15    conversations with platforms.

16          **Q. Got it. And did you take the initiative**  
17    **in these meetings, or did someone direct you to go**  
18    **do these meetings, or contacts?**

19          A. I would say I took initiative on the  
20    meetings. But there were a lot of people asking  
21    staff, or other staff, are we -- were we in contact  
22    with the groups, and do we have any arrangements.

23          **Q. In your current role who do you report to?**

24          A. In my current role I report to the  
25    director of OADC, which is Kevin Griffis.



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1 Q. And who did you report to prior to the  
2 reorganization? That a good word.

3 A. Yes.

4 Q. Can I call it a "reorg"?

5 A. Yes, you can.

6 Q. Prior to the reorg, who did you report  
7 to?

8 A. I reported to the division director for  
9 the division of Public Affairs, who was Michelle  
10 Bonds.

11 Q. All right. So during the beginning of the  
12 pandemic your direct report would be Michelle Barnes  
13 [sic]?

14 A. I was her direct report.

15 Q. Yes, that's what I meant.

16 A. Yes.

17 Q. You would directly report to her?

18 A. Mm-hmm (affirmative).

19 Q. All right. So do you recall her talking  
20 to you about what to do with the social media  
21 companies early on?

22 A. I don't believe we discussed it.

23 Q. And why don't you believe that?

24 A. It was an extremely busy time, and it was  
25 within the scope of work I would normally handle.

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1 Q. All right. Let's look at the early spring  
2 of 2020. What were the types of contacts you had  
3 with the social media companies? And I'm going to  
4 go through some, and you tell me if you had them.

5 Electronic email, or other communications  
6 that are electronic?

7 A. Yes.

8 Q. Telephonic?

9 A. Yes.

10 Q. And in person?

11 A. No.

12 Q. Okay. Who did -- if they're telephonic,  
13 who were you speaking to? I have a hard time  
14 getting any of these people on the phone. How did  
15 you get -- who did you telephonically speak to at  
16 any of these social media companies?

17 A. I had points of contact at several of  
18 them, and we would have meetings when we needed to  
19 talk. So we arranged calls.

20 Q. Do you recall any particular points of  
21 contact?

22 A. Yes.

23 Q. Who are they?

24 A. At Facebook my primary point of contact  
25 was Payton Iheme. I-H-E-M-E. At Google my two

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1 points of contact were Jan Antonaros, and -- forgive  
2 me. I'm blanking on this.

3 Q. We'll be looking at emails. If you see  
4 the name, will you --

5 A. Yes, mm-hmm.

6 Q. Who else?

7 A. A contact we had at Twitter was Todd  
8 O'Brien [sic], though I spoke to him very rarely.  
9 We had other contacts at Twitter, but I don't know  
10 their names too. I don't recall the names of other  
11 platforms. I didn't talk to them as regularly.

12 (Plaintiffs' Exhibit 1 marked.)

13 BY MR. VECCHIONE:

14 Q. Okay. Can you take a look at Exhibit 1.  
15 If counsel would hand it to her, please.

16 And have you seen this document before?

17 A. Yes, I think I did.

18 Q. So this is the Notice of Video Deposition  
19 to be here today; right?

20 A. Yes.

21 Q. You're here pursuant to this notice?

22 A. Yes.

23 Q. All right. And I'll just make one  
24 correction. We're not at Building 21. We're in  
25 Building 19?

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1 A. That's correct.

2 Q. All right. Thank you. You can put that  
3 aside.

4 MR. VECCHIONE: I'm going to hand to  
5 counsel a packet of Exhibit 2, if I might. And if  
6 you could give -- and if you could give the witness  
7 an original, and there are two for your purposes.

8 (Plaintiffs' Exhibit 2 marked.)

9 BY MR. VECCHIONE:

10 Q. I'll give you a moment to read through it.  
11 Do you recognize this?

12 A. Yes.

13 Q. All right. What is it?

14 A. An email chain with Facebook around COVID.

15 Q. Yeah. Early February 2020?

16 A. Yes.

17 Q. Let's get -- just so we can get onto the  
18 same page, the way this email chain works is the  
19 oldest part is in the back; right? And then it  
20 reads up.

21 A. Yes.

22 Q. And let's go to the back. In the first  
23 part of the chain, as far as I can see, it says from  
24 Carol Y. Crawford?

25 A. Yes.

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1 Q. All right. And there is a -- there is an  
2 email there. Well, could you read that for me, your  
3 email?

4 A. "Payton, just looping you in on  
5 something."

6 Q. Oh. No, no, no. I mean, I want to get  
7 the email down. I think it's C -- because of  
8 your -- I think it's [REDACTED]@CDC.gov?

9 A. Mm-hmm (affirmative).

10 Q. Am I correct about that?

11 A. That's mine, yes.

12 Q. Okay. And is that the only email,  
13 government email, you used over this whole period,  
14 or is there a different one?

15 A. There is a -- it's the same email box, but  
16 there is also [REDACTED]@CDC.gov. It's like an alias  
17 for [REDACTED]@CDC.gov. It's the same box.

18 Q. They all go to the same place?

19 A. Yes.

20 Q. It's just how the computer reads it, or?

21 A. It's just an easier email address for  
22 someone to give people --

23 Q. Quicker to write?

24 A. -- than [REDACTED].

25 Q. Do you have any other government --

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1 A. No.

2 Q. And how about have you contacted any of  
3 the social media companies with a personal email?

4 A. Never.

5 Q. Okay. So and then this is -- I believe  
6 this is a fellow we identified earlier; right?

7 Who's Payton Iheme?

8 A. Yes.

9 Q. And if I see [REDACTED]@fb.com, that's your  
10 understanding that's Payton Iheme --

11 A. Yes.

12 Q. -- that's his email? And then it says cc  
13 [REDACTED], and then there is an [REDACTED] Facebook [sic]  
14 [REDACTED]@CDC.gov". Who is that?

15 A. Jay Dempsey worked -- works now and within  
16 my branch as the social media lead, and he reported  
17 to me.

18 Q. Okay. And his [REDACTED] has nothing to do with  
19 Facebook as in Payton's email; right --

20 A. No.

21 Q. -- it's just a coincidence?

22 A. It's his user ID, yes.

23 Q. All right. Thank you. And what was his  
24 role?

25 A. He was the social media lead within my

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1 branch.

2 Q. Okay. And what do you state here in this  
3 email to Payton?

4 A. (As read) Just looping you in on something  
5 Jay and I had awareness of. Are you in the loop  
6 with this.

7 Q. All right. And what is this? What have  
8 you attached here?

9 A. I don't remember this part of the chain at  
10 all, but it appears to be a note from Facebook to  
11 someone at the State Department outlining some  
12 Facebook work on COVID.

13 Q. And let's get some terms down here. The  
14 reason you believe that, is that just from your  
15 memory, or is that because it's Shelley Thakral --  
16 it's from them to a person in the State Department?

17 A. I don't know any of the names on the  
18 email.

19 Q. Okay.

20 A. I read this. This is the first thing I  
21 read when you handed --

22 Q. Yeah.

23 A. -- me the document.

24 Q. Got it.

25 A. I started at the back.



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1 Q. So I'm just trying to be clear. You don't  
2 have a present recollection of what this is --

3 A. No.

4 Q. -- what you just told me you got because  
5 that's what it says; right?

6 A. No. I don't remember that part of the  
7 chain, no. No.

8 Q. And were you asking Mr. Iheme whether he  
9 knew about this, or was he responsible for it?  
10 Which what does it mean "in the loop about it"?

11 A. As a note, Payton is female.

12 Q. Okay.

13 A. I mean, I'm reading what I wrote: Just  
14 looping you on something Jay and I had awareness on.  
15 Are you in the loop with this?

16 That's all I know. It's what I typed.

17 Q. You don't have any other understanding  
18 than that?

19 A. No.

20 Q. All right. Let's move to the next part of  
21 the chain.

22 (REPORTER'S NOTE: Mr. Sauer enters  
23 deposition.)

24 BY MR. VECCHIONE:

25 Q. I see it's from Payton, from Ms. Iheme, to

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1     **you and cc'ing Dempsey; right?**

2             A.   Yes.

3             **Q.   And he's responding to your request about**  
4     **the loop.  What does he say there?**

5             A.   At 3:35 for Payton is what you're asking  
6     me?

7             **Q.   Yes, I am.  Thank you.**

8             A.   Okay.  (As read) Let me know if you're --  
9     you would like to speak to our teams working on  
10    these items.

11            Do you want me to read the whole email?

12            **Q.   Yes, please.**

13            A.   Okay.  (As read)  Our teams at Facebook  
14    have been working to identify how we can support  
15    efforts to provide users with accurate and timely  
16    information about coronavirus.  We would like to get  
17    CDC's feedback on a few key initiatives that we are  
18    considering launching in the coming days, weeks.  I  
19    have outlined the specifics below, and would greatly  
20    appreciate your thoughts on the tactics and proposed  
21    design/content.  We would be happy to jump on a  
22    quick call today or tomorrow if that would be easier  
23    as well."

24            **Q.   All right.  That's great.  That's -- okay.**  
25    **And then he has a bunch of proposals, like three**

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1     **proposals; correct?**

2             A.   Yes.

3             Q.   All right.   And you respond to him the  
4     **next day?**

5             A.   Yes.

6             Q.   All right.   And you say "sorry for the  
7     **delay."**

8                     Were you in the habit of responding to him  
9     **faster than less than 24 hours on these matters at**  
10    **that point in time?**

11            A.   Payton is female.

12            Q.   Yeah, I heard.   Thank you.

13            A.   It's okay.

14            Q.   You know what Payton I'm thinking of?

15            A.   No.

16            Q.   **The football player.**

17            A.   Oh, sorry.

18                     I don't know.   At this time I believe we  
19    were working a lot of hours, and a few hours seemed  
20    like a long time.   I don't think I -- I don't think  
21    Payton and I had known each other via email very  
22    long at this point, so I can't speculate on how  
23    quick I normally email her.

24            Q.   Okay.   And you say in here in item one:  
25    **As well, if can rotate messages, there might be**

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1 times we might want to address widespread myths like  
2 mask use or new issues.

3 At this time what was the myth of mask  
4 use?

5 A. My general memory of mask use was that  
6 there was confusion about whether people should wear  
7 masks or not.

8 Q. And what was CDC's view at that time?

9 A. I really can't speak to our  
10 recommendations. I probably don't have the specific  
11 recall of the timelines.

12 Q. Okay. And then your next sentence: "This  
13 could and should replace flu shot messaging."

14 And was that messaging that the platforms  
15 were already doing about flu prior to COVID?

16 A. This was one of the occasional  
17 interactions that I recall having with Facebook.  
18 They had -- I believe -- I believe they approached  
19 CDC about flu messaging that prior flu season, and  
20 we had had a few phone calls with them and our flu  
21 division. And my recollection is that we provided  
22 them with some public domain content for them to  
23 highlight.

24 Q. Okay. And then the next one is you're  
25 still trying to get this phone call together. And

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1 eventually you get a phone call together; right?

2 A. It looks like it from this chain, yes.

3 Q. Okay. Can you tell us who was on that  
4 call besides Payton and you?

5 A. I don't recall the specific calls from  
6 that time period.

7 Q. Okay. And do you know what was said on  
8 the call at all, what you discussed?

9 A. On that specific call, I do not.

10 Q. Do you have any notes, calendars, or other  
11 records what was said on the call?

12 A. I don't believe -- I mean, the calendar  
13 appointment's probably in my Outlook. I don't  
14 recall us taking notes, much notes, from any of the  
15 meetings. Occasional followup items. But I don't  
16 know if we took any for this. If we did, it would  
17 have been in my email, or my record, the electronic  
18 records.

19 MR. VECCHIONE: All right. Mr. Sauer has  
20 joined us. Can we take a five-minute break while I  
21 put things in order? And I will give you the next  
22 exhibit.

23 MS. SNOW: Okay.

24 THE VIDEOGRAPHER: We are off record at  
25 9:57.

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1 (Recess 9:57 a.m. - 10:09 a.m.)

2 THE VIDEOGRAPHER: We are back on the  
3 record at 10:09.

4 MS. SNOW: If I could just --

5 MR. VECCHIONE: Go ahead.

6 MS. SNOW: Defendants just wanted to note  
7 that at the request of plaintiffs' counsel we've  
8 forwarded a Zoom link with a call-in number for  
9 counsel, for plaintiffs' counsel, who could not be  
10 here at the deposition to listen in. And with the  
11 agreement of the parties, the Zoom link will not be  
12 shared with others beyond the three plaintiffs'  
13 counsel who are listening in and the Zoom, the  
14 deposition will not be recorded using the phone, the  
15 call-in number.

16 MR. VECCHIONE: Remotely by them. Just by  
17 him. (Indicating videographer.)

18 MS. SNOW: Yes, yes. Exactly, yes. Thank  
19 you. And then we also just wanted to -- the witness  
20 wanted to clarify a point during the last round of  
21 questioning.

22 BY MR. VECCHIONE:

23 **Q. Go right ahead.**

24 A. In reviewing this email, it refreshed my  
25 memory about roles.

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1           Q. Are you looking at Exhibit 3 or 2, for my  
2 purposes?

3           A. 2.

4           Q. Thank you.

5           A. I recalled that during the time of these  
6 emails, I was actually serving as the acting  
7 director for the division of Public Affairs. I  
8 served in that role for, I think, five or six  
9 months.

10           Q. Was that an add-on to your other duties,  
11 or instead of, or like was it -- how did that come  
12 about?

13           A. Michelle Bonds had gone on a detail  
14 somewhere else. I don't recall where. Sorry. But  
15 I was still really -- especially when COVID hit, I  
16 really started also focusing on digital in-depth.  
17 So that's why I was still involved. I mean, digital  
18 was still part of the division of Public Affairs, so  
19 it was still part of my portfolio, but I had the  
20 expertise on it, so.

21           Q. All right. Thank you for that. And  
22 during the day if there is any -- you have further  
23 recollection as further documents get put in front  
24 of you, feel free to interrupt me and tell me that.

25           A. Okay.

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1 MR. VECCHIONE: Does the witness have  
2 Exhibit 3 in front of her?

3 MS. SNOW: There you go.  
4 (Plaintiffs' Exhibit 3 marked.)

5 MR. VECCHIONE: This is a short one. Take  
6 a second to take a look at it.

7 BY MR. VECCHIONE:

8 Q. Do you recognize this document?

9 A. No.

10 Q. Can you tell me what the subject line is  
11 of the first email on the chain?

12 A. Facebook COVID-19 Response Efforts.

13 Q. All right. And it's from Ms. Iheme that  
14 we've spoken about before to you; correct?

15 A. Yes.

16 Q. And it says: "Apologies for the late  
17 note," she says to you. I want to ensure you -- "I  
18 want to ensure you are aware that Mark just shared  
19 our ongoing work to support government."

20 Who's Mark?

21 A. I don't know for sure, but I'm assuming  
22 this was Mark Zuckerberg.

23 Q. And she says to you: "Our goal is to help  
24 organizations to get their safety message out to the  
25 public, remove misinformation, and support overall



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1 community efforts in areas where we can be of help;"  
2 right?

3 A. Yes.

4 Q. Now, the next thing I see is above that it  
5 says on "March 5, 2020, at 8:55 a.m. Crawford, Carol  
6 Y...wrote," is that an email, is that a reply email  
7 from you to her?

8 A. Yes.

9 Q. You say there: "We want to do a very  
10 controlled Q&A and would like to know our best  
11 options."

12 What are you referring to there, what's  
13 going on?

14 A. I believe this is in reference to a  
15 Facebook Live event that we were trying to plan, and  
16 it was going to be -- we expected it to be pretty  
17 big, and we were asking for help in setting it up in  
18 the best practices.

19 Q. Was that from a technological standpoint,  
20 like, how it was going to work, or did you need  
21 their input on information?

22 A. My memory is that it was mostly about how  
23 it would work. We had not done many big Facebook  
24 Lives before then, and we were worried about having,  
25 like, thousands of Q&A that we couldn't possibly

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1 answer.

2 Q. All right. And the next thing you say  
3 there is: "Our lead POC" -- is that point of  
4 contact, when I see POC?

5 A. Yes.

6 Q. Is Kat Turner at [REDACTED] -- I'll say [REDACTED]?

7 A. [REDACTED].

8 Q. [REDACTED]@CDC.gov. So who is that?

9 A. Kat was a social media coordinator in one  
10 of our centers that was willing to help manage this  
11 effort.

12 Q. In the original email from Payton Theme  
13 what was your understanding of why she was sending  
14 you this information?

15 A. I don't recall the specific email, or --  
16 there looks like there is a link -- or what it said,  
17 or what it was about. But they would often forward  
18 posts from their corporations for awareness for us.  
19 So I assume that was probably what this was about.

20 Q. Okay. And then your final email on the  
21 chain you send your -- that's your phone number at  
22 work, I take it?

23 A. It's actually my personal cell that I use  
24 as a what CDC calls "bring your own device."

25 Q. Got it.

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1 A. Yes, but it was the cell phone.

2 Q. It's your cell number you use?

3 A. Yes.

4 Q. Did you message through that cell to any  
5 of the social media companies?

6 A. The only time I recall using my cell phone  
7 to message anyone was like we're late for the  
8 meeting, or the contact number didn't work or  
9 something like that. We didn't have any kind of  
10 conversations on texting.

11 Q. Do you recall whether you spoke to Payton  
12 Iheme at this time?

13 A. No.

14 Q. Now, this is -- from my understanding is  
15 this call that you're referring at the top, your  
16 last part, is that to arrange the Facebook meeting,  
17 or is that the Facebook meeting, the Q&A?

18 MS. SNOW: Objection. Vague.

19 BY MR. VECCHIONE:

20 Q. Okay. So let me tell you -- the reason  
21 it's vague is because I don't understand something.

22 Here's what I'm trying to understand from  
23 information. Originally Ms. Iheme writes to you  
24 about this information. And then you say you want a  
25 controlled Q&A; right? On Facebook. And then

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1     somehow you're going to -- you're going to arrange  
2     that with them and Kat Turner.

3             And then you say I'll -- here's my number,  
4     and Kat knows it, I have an appointment.

5             Did you have a conversation is what I'm  
6     getting about besides the Facebook Q&A?

7             A. I don't know. But we talked pretty  
8     regularly around this time, so I imagine we probably  
9     did talk. But I don't know that for sure.

10            Q. All right. What was your understanding of  
11     Ms. Theme's statement that the -- Facebook was going  
12     to help organizations remove misinformation?

13            A. I don't recall a recollection of  
14     discussing misinformation with Payton around this  
15     time, so I can't speculate.

16            Q. You don't have a present recollection of  
17     what that meant?

18            A. No.

19            Q. All right. And once again for this call  
20     that you had, and maybe Kat Turner was on it, maybe  
21     she wasn't, do you have any record of that call, or  
22     what might have been said?

23            A. It doesn't look like this had an  
24     appointment associated with it, so I don't think  
25     there's an appointment, and I don't know -- I don't

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1 remember the call, so I don't recall if there were  
2 notes. But I know in general very little notes were  
3 kept.

4 Q. Now, you said you don't recall many  
5 conversations about removing misinformation at that  
6 time. When do you recall such conversations?

7 A. I remember it becoming occasionally  
8 discussed in the fall of 2020 perhaps.

9 Q. Okay. And what do you recall being  
10 discussed at that time?

11 A. I can recall us generally saying things to  
12 the effect of -- I don't remember any specifics, but  
13 misinformation is really growing, or, you know, what  
14 do you think we could be doing to address it? That  
15 kind of conversation.

16 Q. All right.

17 A. Very general.

18 (Plaintiffs' Exhibit 4 marked.)

19 BY MR. VECCHIONE:

20 Q. Fair enough. Let's move on to Exhibit 4.

21 A. Okay.

22 Q. All right. And I'll give you a moment to  
23 take a look at that.

24 All right. Have you had a chance to  
25 review?

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1 A. Yes.

2 Q. Do you recall this email?

3 A. No.

4 Q. All right. Well, let's talk about it and  
5 who these people are because I think we have some  
6 new folks.

7 So what's the subject line of the first,  
8 the email there at the top?

9 A. CDC brief on ways to reach high-risk and  
10 frequent travelers.

11 Q. All right. And what is the CDC brief?  
12 What does that refer to?

13 A. I don't -- I don't recall what the brief  
14 was.

15 Q. Okay. But as -- my question is a little  
16 broader than that. We're lawyers.

17 A. Mm-hmm (affirmative).

18 Q. We write briefs all the time; right? They  
19 are actually physical pieces of a paper that we put  
20 forth our arguments for. Sometimes people use that  
21 term as bullet points, or sometimes their positions,  
22 even just orally stated.

23 What I'm trying to get at is what does  
24 "brief" mean in this context?

25 A. To me, a brief probably was a one- or

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1 two-page summary of something that we, or they, were  
2 trying to do.

3 Q. Now, this email exchange I think occurred  
4 sometime at the end of March 31st; is that correct?

5 A. Yes.

6 Q. All right. And it was between you and  
7 Kevin Hatcher, and his email is [REDACTED]@fb.com?

8 A. That's what the email says.

9 Q. All right. Who is Kevin Hatcher?

10 A. Oh. That says -- I don't have a clear  
11 recollection. There was a lot going on during this  
12 time beyond any of this work. But I think that  
13 Kevin Hatcher might have been some type of  
14 instructional designer with Facebook that I --  
15 looking at the units and the Unit 1 and Unit 2,  
16 there was an effort to put together like learning  
17 modules that communities could use. I think that  
18 that might have been what this was about, and that  
19 that was Kevin's role.

20 Q. All right.

21 A. I cannot be sure, though.

22 Q. All right. But from your understanding of  
23 what this says --

24 A. Mm-hmm (affirmative).

25 Q. -- and how it worked, that is your best

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1 understanding right now; whether it's right or wrong  
2 that's what you understand?

3 A. Yes, I remember that activity, and this  
4 seems to match that activity.

5 Q. All right. Then at the top you say:  
6 "Kevin, I realized others made comments on the pdfs  
7 after I sent you the previous one. So, this  
8 answered your Q."

9 Is that question?

10 A. Yes.

11 Q. -- "on breathing. I hate to ask but can  
12 your team check the other comments here? I  
13 apologize."

14 What are the other comments?

15 A. I don't know what the other comments were.  
16 But it appears to me that we sent to a group of  
17 people the drafts, and CDC folks commented and I  
18 forwarded it back.

19 Q. All right.

20 A. But I don't remember the comments.

21 Q. All right. Can you go to the end page of  
22 this document?

23 A. Mm-hmm (affirmative).

24 Q. It says: "Recommend breaking this  
25 sentence up as it's linking stress to severe illness



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1 in a way I we don't. If ARTF doesn't suggest an  
2 edit, we can."

3 Do you know who ARTF is?

4 A. I don't. But I believe it's probably a  
5 CDC task force. TF would be task force. I don't  
6 know what AR is.

7 Q. Got it. Do you know what Mr. Hatcher was  
8 referring to where it says: "Emergency warning  
9 signs include difficulty breathing"? Do you know  
10 what that was referring to?

11 A. I only know what I'm reading here.

12 Q. Right.

13 A. The unit that he was developing must have  
14 had this wording, and he was asking for  
15 clarification on what the wording should be.

16 Q. All right. And do you have an  
17 understanding, or do you know, why Mr. Hatcher was  
18 asking whether Facebook should add extreme before  
19 emergency warning signs?

20 A. I have no recollection of it.

21 Q. Okay. Do you know why Mr. Hatcher asked  
22 whether he should replace: Older people are at high  
23 risk from severe illness from COVID to people over  
24 65? Do you know if there was any messaging from CDC  
25 at that time?

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1 A. I do not know.

2 Q. All right. Do you know now sitting here  
3 whether there is any preference by digital media at  
4 CDC's digital output right now, for either of those  
5 terms?

6 A. I do not know because our office does not  
7 write the content.

8 Q. Okay. You can put that aside.

9 A. Okay.

10 (Plaintiffs' Exhibit 5 marked.)

11 BY MR. VECCHIONE:

12 Q. Take a minute, take a look at that.

13 A. Okay.

14 Q. You've got it?

15 A. Mm-hmm (affirmative).

16 Q. So I think we don't have any new players;  
17 right? These are all the same people we talked  
18 about before, you and Ms. Iheme and Mr. Hatcher.

19 Can you tell me what the subject of this  
20 email string was?

21 A. CDC brief on ways to reach high-risk and  
22 frequent travelers.

23 Q. Okay. And I think this is March 30th?

24 A. 2020, yes.

25 Q. And so I guess it's before the one I

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1       **showed you that was March 31st, Exhibit 4?**

2               A. I don't have that exhibit, but I assume  
3       that's correct.

4               **Q. Okay. We can compare it.**

5               Can you go to the very beginning of the  
6       string on this?

7               A. Mm-hmm (affirmative).

8               **Q. There is a blacked out "from," and then it**  
9       **says: "When: 3:30-4:30, Subject: CDC brief on**  
10      **ways to reach high-risk and frequent travelers."**

11              Do you see that?

12              A. Yes.

13              **Q. What is that?**

14              A. It looks like an appointment for a phone  
15      call.

16              **Q. Okay.**

17              A. But I'm not -- it's not fully there.

18              **Q. Yeah. Would Facebook be sending that to**  
19      **you, or is that just at the bottom of his email? Do**  
20      **you have any understanding of how it works?**

21              A. They have a different email system than we  
22      have, but it looks similar to someone forwarding on  
23      an appointment and using the chain as an email,  
24      though I don't know that for sure.

25              **Q. Got it. And this starts at a March 27th**

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1 email from him to him -- or from her to herself and  
2 you; correct?

3 A. Yes.

4 Q. And then there is a Margaret E. Silver.  
5 Who is that?

6 A. She was with our Travelers Health group.  
7 I believe that's where she was.

8 Q. And what was the Travelers Health group?

9 A. We have a unit at CDC that focuses on  
10 traveler's health. There is a website on traveler's  
11 health.

12 Q. And who's Caroline Seman?

13 A. I believe she was also with Travelers  
14 Health.

15 Q. All right. And then I see Dempsey. Is  
16 that the same Dempsey we saw before?

17 A. Yes, yes.

18 Q. Does that -- and then [REDACTED]?

19 A. That's still Jay Dempsey.

20 Q. Still Dempsey, it's just split; right?

21 A. Mm-hmm (affirmative).

22 Q. So Ms. Iheme says to you: "Hi, Carol and  
23 team. As relayed on the call, we're happy to target  
24 additional populations such as youth as the content  
25 becomes available. Just let us know. For the first

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1 wave, we'd like to move forward with launching this  
2 next week," I think it's "ideally April 3rd to the  
3 groups for which you already produced content (older  
4 adults, HIV plus, asthma and pregnant women)."

5 Do you know whether that's for travelers,  
6 or just general populations?

7 A. That was for general populations.

8 Q. All right. And how do you know that?

9 A. I have some recollection of this project.

10 Q. Okay.

11 A. It was like units of information on COVID  
12 that Facebook communities could attach to their  
13 groups. And I'm not 100 percent sure about this,  
14 but I think we asked about travel, and then they  
15 mentioned the idea of this project and said if you  
16 have content for -- that would help other groups, we  
17 could do similar things.

18 Q. Okay. And then he then asks how you want  
19 this to read on the Facebook's sites, whether  
20 sourced from CDC, or authored by CDC?

21 A. Yes, I see that.

22 Q. Do you know what the answer was to that?

23 A. I don't recall which one we picked, but  
24 I'm pretty sure it was one of the sources.

25 Q. Okay. Let's go up to the next, the March

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1 27th, 3:01 p.m.

2 A. Okay.

3 Q. There is some more people here, I just  
4 want to -- I don't know that we've seen. Well, we  
5 have seen her. Okay. Never mind. You described  
6 it.

7 And then at the very top, March 30, he  
8 says they are going to have their content  
9 strategists make the changes you'd agreed to that  
10 day.

11 A. That's what I'm reading as well.

12 Q. Okay. Now, why was the CDC editing this  
13 content?

14 MS. SNOW: Objection. Mischaracterizes  
15 testimony and the document.

16 BY MR. VECCHIONE:

17 Q. Okay. You can answer.

18 A. I don't have the attachments or the  
19 documents, so I don't know what we were editing or  
20 not editing. But we had content on the website, but  
21 the format of the units was slightly different. So  
22 we had to take the content from our website and have  
23 it fit in the units.

24 Q. Okay.

25 A. And they requested CDC's review of that.

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1           **Q. All right. Do you know why in the part**  
2       **where he says: "If we don't launch next week we'll**  
3       **be pulled onto other COVID-19 projects, hence the**  
4       **urgency," do you know why he's asking you about when**  
5       **they should launch?**

6           **A. I don't think he was asking me about when**  
7       **we should launch. I think he's letting us know if**  
8       **we don't launch they may not get to it.**

9           **Q. All right. And do you know if those, if**  
10       **he's referring to other COVID projects he has with**  
11       **CDC, or just generally?**

12          **A. I don't know for sure.**

13          **Q. You can put that aside.**

14          **A. Okay.**

15          **Q. Just one more question about that. Is he**  
16       **creating a Facebook page for CDC, or just for**  
17       **Facebook, do you know?**

18          **A. My recollection of what this project was,**  
19       **it was like units that would exist in Facebook that**  
20       **like if you're in a group on travel that the group**  
21       **administrator could provide a link to these units if**  
22       **people wanted additional COVID information. They**  
23       **are not up any longer and my memory is vague on**  
24       **them.**

25               **MR. VECCHIONE: Got it. Thank you.**

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1 (Plaintiffs' Exhibit 6 marked.)

2 BY MR. VECCHIONE:

3 Q. Take a moment to look at this. This is  
4 Exhibit 6. The mark may look like a 4, but I assure  
5 you it's Exhibit 6.

6 All right. Do you recognize this  
7 document?

8 A. No.

9 Q. But do you know what it is?

10 A. Yes.

11 Q. What is it?

12 A. It's a discussion about access to or for  
13 Facebook giving us CrowdTangle COVID reports.

14 Q. All right. And let's talk about this a  
15 little bit. We're more forward in time; right?  
16 This is sometime in January 2021?

17 A. Correct.

18 Q. And I think both dates say January 26,  
19 2021. Would you agree with me there?

20 A. Yes. Well no, the first one is  
21 January 25th.

22 Q. All right. See, that's why we have  
23 witnesses.

24 All right. The first thing is what's  
25 CrowdTangle?



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1           A. I have not used CrowdTangle personally,  
2   but I've seen it demonstrated. But it is to my --  
3   my description of it is it's a social media  
4   listening tool for Meta properties.

5           **Q. What are Meta properties?**

6           A. Like Instagram and Facebook.

7           **Q. Okay. So by Meta properties you mean**  
8   **properties of the company Meta, not on some other**  
9   **level of?**

10          A. No.

11          **Q. Okay.**

12          A. Their platforms.

13          **Q. Got it. Thank you.**

14                 Let's look at that January 25th email,  
15   because I think we have some new people here.

16                 There is Payton Iheme, and you. It's from  
17   her to you. And you cc Lauren Balog Wright at  
18   Facebook. Do you know who that is?

19          A. I think that Lauren, just from reading  
20   this, she was the person that was the CrowdTangle  
21   expert and was going to provide the reports.

22          **Q. Okay. And Priya Gangolly?**

23          A. Priya Gangolly I interpreted to be like an  
24   assistant to Payton.

25          **Q. And Kelly Perron?**

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1           A. And from this email I believe Kelly was  
2 also going to provide the CrowdTangle reports.

3           **Q. And it says: Subject CrowdTangle COVID-19**  
4 **reports for WHO.**

5                   **Not to channel Abbott and Costello, but**  
6 **who is that?**

7           A. World Health Organization.

8           **Q. And why were they asking you about**  
9 **information to WHO?**

10           A. Well, I do have -- after reading this I do  
11 recall the conversation a bit. But what they are  
12 saying in this email is we provide this report to  
13 WHO, and we can provide it to you as well.

14           **Q. Okay. What do you remember of the**  
15 **conversation?**

16           A. Just that they -- I believe they mentioned  
17 on a call that they could possibly do this, and this  
18 is a followup email. And they shared the reports  
19 and occasionally they would ask me on the call if  
20 these reports were helpful.

21           **Q. And let's see what he says here, what she**  
22 **says here. "Hi, Carol, I am following up on our**  
23 **conversation several weeks ago about providing more**  
24 **detailed reporting from our CrowdTangle team. I**  
25 **wanted to share our first CrowdTangle COVID content**

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1 report with you courtesy of Lauren and Kelly on this  
2 cc. They are providing these to WHO, thought it  
3 helpful for CDC's teams as well." And then she says  
4 what the time period of it is, and that these are  
5 going to be biweekly.

6 What kind of information was in the  
7 CrowdTangle? What did it provide you?

8 A. Well, I don't have a clear recollection of  
9 the reports because I sent the reports to other  
10 teams. But typically social media listening reports  
11 show themes and -- of discussion on social media  
12 channels.

13 Q. Okay. And so if you look down further  
14 I'll just ask you again some words that I think I  
15 know what they mean, but we might as well put on the  
16 record.

17 (As read) Lauren, can you -- can do that  
18 "distro."

19 That's distribution?

20 A. Yes.

21 Q. And "the full report is attached but some  
22 highlights the CrowdTangle team would like to call  
23 to your attention are: Top engaged COVID and  
24 vaccine-related content overall across Pages and  
25 Groups." And it says "largely a mix of educational

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1 posts, reports of successful vaccinations," and it  
2 goes on. And then "news/commentary on COVID and  
3 vaccination rollout."

4 So does this -- is this like an algorithm  
5 that shows you where -- what people are talking  
6 about?

7 A. I wouldn't characterize it as an  
8 algorithm. But it's a search of content on social  
9 media, and a summary of the higher volume  
10 conversations. It's helpful for communicators to  
11 know what is being discussed because it helps  
12 improve our communication materials.

13 Q. All right. And then he says: "However,  
14 posts falling into the following themes, all of  
15 which have potential risks, also garnered high  
16 engagement." And then he has reports of healthcare  
17 workers refusing the vaccine; right?

18 A. Yes.

19 Q. And he says there was an article in Forbes  
20 about it?

21 A. Yes.

22 Q. Posts about alleged vaccine-related  
23 deaths?

24 A. Yes, I see that, too.

25 Q. And: "News and reports of severe vaccine

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1 side effects included both first- and secondhand  
2 reports in Groups, with users sharing photos and  
3 video."

4 Do you see that?

5 A. Yes.

6 Q. Why are these of concern to the CDC, if at  
7 all?

8 MS. SNOW: Objection. Mischaracterizes  
9 testimony, and the document.

10 BY MR. VECCHIONE:

11 Q. You can answer.

12 A. Well, this doesn't say that they were a  
13 concern to CDC. They are providing a report of the  
14 most talked about topics on social media during this  
15 time period. But in general, as I mentioned before,  
16 it does help for people to -- for communicators to  
17 know what conversations occurs on social media  
18 because it helps us identify gaps in knowledge, or  
19 confusion, or things that we're not communicating  
20 effectively that we need to adjust.

21 Q. All right. Again, pardon me -- but  
22 secondhand reports and groups, groups are like the  
23 travelers information groups; if I'm on Facebook I  
24 can belong to various groups, and I get information  
25 on that feed?

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1           A. Can you clarify what you're referring to  
2 with groups?

3           Q. He says number 3 -- number -- well, in 1,  
4 2 and 3 he uses the words "groups." In 1 he says:  
5 Worker-centric groups, groups especially  
6 anti-vaccination groups. And then in 3 he has  
7 secondhand reports in groups. So I'm just asking  
8 for the record --

9           A. Yeah.

10          Q. -- that if I am on Facebook I can belong  
11 to various groups and get information that that  
12 group gets?

13          A. I cannot -- I can't say for sure that this  
14 report was about the Facebook groups, but it seems  
15 likely that that's what that is reference to and you  
16 are describing them correctly.

17          Q. Thank you. And then he tells -- you tell  
18 in the next -- in January 26th you write to  
19 Ms. Theme and you say -- you say: "It looks  
20 wonderful and much appreciated," and then send, send  
21 them to you. It says: "One group we'll be adding  
22 is the Census group who hopefully will soon start  
23 their project."

24                "Also, the wide group of those looking at  
25 misinfo will want this."

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1 First, what's the Census group within CDC?

2 Or is that not within CDC? What is that, Census  
3 group?

4 A. This is the Census Bureau.

5 Q. Okay. And they would be on this CDC list?

6 A. It appears I was suggesting that, yes.

7 Q. Okay. And then who's the wide group of  
8 those looking at -- well, first let's go back.

9 Misinfo is misinformation?

10 A. Yes.

11 Q. Who's the wide group of those looking at  
12 misinformation?

13 A. I don't know specifically what I was  
14 referring to there.

15 Q. Do you know generally?

16 A. I suspect that it was probably people  
17 working on communication materials or developing  
18 reports about gaps and areas of confusion.

19 Q. Okay. Do you have notes or other records  
20 of the phone call he refers -- she refers to: "I'm  
21 following up on our conversation several weeks ago"?

22 A. I doubt I have notes.

23 Q. Okay.

24 A. If I did, they would have been electronic.

25 Q. Do you know who took part in the

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1 conversation?

2 A. I don't know. But typically I was on the  
3 call, sometimes Jay was as well, Jay Dempsey. But I  
4 don't recall the specific meeting.

5 Q. Did you instruct Ms. Theme or anyone else  
6 at Facebook to do anything with the biweekly reports  
7 other than send them to you?

8 MS. SNOW: Objection. Mischaracterizes  
9 testimony.

10 BY MR. VECCHIONE:

11 Q. You did ask Ms. Theme to send you the  
12 biweekly reports, didn't you?

13 A. She offered to send me the biweekly  
14 reports, and I agreed that would be good.

15 Q. Did you instruct her to do anything else  
16 regarding the biweekly reports?

17 A. Not that I recall.

18 Q. Do you know who decided the reports would  
19 be developed biweekly?

20 A. I don't recall. But this email seems to  
21 suggest that they were already doing biweekly ones.

22 Q. For the -- for your purposes, what was the  
23 purpose of the reports, receiving them?

24 A. They would help us understand what was  
25 being discussed on social media about COVID, which



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1 helps us look for gaps in information, confusion  
2 about facts, things that we might need to adjust our  
3 communication materials for.

4 Q. Had you prior to this email discussed with  
5 Ms. Theme such items as reports of healthcare  
6 workers refusing the vaccine, posts about alleged  
7 vaccine-related deaths, and news and reports of  
8 severe vaccine side effects? Did you ever report to  
9 her that those would be of interest to the CDC?

10 A. I don't recall reporting or discussing  
11 these with them specifically. I do recall generally  
12 discussing misinformation with Facebook around this  
13 time and --

14 Q. And those could have been included within  
15 that discussion?

16 A. Possibly.

17 Q. Why did you add Census to the distribution  
18 of this?

19 A. They were going to start working with the  
20 CDC regarding misinformation.

21 Q. So what did -- what did the wide group of  
22 those looking at misinformation do with the reports?

23 A. I don't know what they did with the  
24 reports. However, I do know two things that were  
25 likely done with the reports. We had -- we have

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1 part of our Joint Information Center in the  
2 Emergency Response a research team that compiles all  
3 the themes of discussion on news and social media.  
4 And I know that they received these reports, and  
5 they use a lot of sources to develop a summary for  
6 the response for all the reasons I just described  
7 about why this is helpful.

8 I believe at this time it was also part of  
9 a publicly-available vaccine confidence report that  
10 also looked across themes, what was being discussed,  
11 and where areas of confusion were so that they could  
12 update vaccine communication and other issues.  
13 Those are posted on CDC's website.

14 **Q. Did you do anything with the reports**  
15 **besides forward them on to Census and to this wide**  
16 **group?**

17 A. Anything with the CrowdTangle reports, I  
18 didn't personally do anything else with the  
19 CrowdTangle reports.

20 **Q. Do you know if anyone else did anything**  
21 **besides what you've described with the CrowdTangle**  
22 **reports?**

23 A. I would assume that it was used by people  
24 to look in background of conversations similar to  
25 what I have described.

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1 MR. VECCHIONE: All right. You can put  
2 that aside.

3 (Plaintiffs' Exhibit 7 marked.)

4 BY MR. VECCHIONE:

5 Q. All right. So what is the subject line of  
6 this email chain?

7 A. "Crowd Tangle COVID-19 Reports."

8 Q. All right. Let's take a look at the  
9 February 21, 2021, 8:39. Who is this from and who's  
10 the recipient?

11 A. Kelly Perron at Facebook, and I'm the  
12 recipient.

13 Q. All right. And we've discussed her  
14 before. She was going to be one of the contacts  
15 with CrowdTangle; right?

16 A. Yes.

17 Q. And what is the summary that Perron  
18 reports?

19 A. She attached the report, which is not  
20 here, but and then summarized the high points.

21 Q. Okay. And why is she reporting this to  
22 you? Is this part of the biweekly report that you  
23 agreed to earlier?

24 A. Yes.

25 Q. And this would be a summary of a report

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1     **that's probably attached, but it's not here?**

2             A.   Correct.

3             **Q.   All right.   And what did you do with this**  
4     **information?**

5             A.   We created a mail group, and this was  
6     forwarded on by -- I either forwarded it, or over  
7     time I had an assistant that started forwarding  
8     them.

9             **Q.   All right.   So the same groups within the**  
10    **CDC and the Census we talked about before?**

11            A.   At some point I recall adding Census to  
12    the distro.   I am sure by May or March there were  
13    several time periods they were probably included.  
14    The distribution list likely changed a bit because  
15    people deployed into the response and out of the  
16    response, but, yes.

17            **Q.   Okay.   Can you take a look at the emails**  
18    **dated Tuesday, February 16 and 17th, 2021 at**  
19    **9:00 p.m.?**

20            A.   Yes.

21            **Q.   So who is that from, and who is that to?**

22            A.   That's Kelly Perron at Facebook to me.

23            **Q.   And what is she summarizing here?   What is**  
24    **the summary that she reports?**

25            A.   It's the -- it looks like the next

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1 biweekly report. And it looks attached, but it's  
2 not in the exhibit. And she summarized it in the  
3 body of the email.

4 Q. All right. And she's highlighted, some  
5 things are highlighted, right, in dark black?

6 A. Some things are bolded.

7 Q. Bolded. That's right. Reports of deaths  
8 post-vaccination?

9 A. Yes, that's in bold.

10 Q. Double masking?

11 A. Yes, that's bold.

12 Q. And personal reports of vaccination?

13 A. Yes, that's bold.

14 Q. Why did she report this to you, those  
15 highlights?

16 A. There again, they are using CrowdTangle to  
17 do a summary of the themes that are being discussed  
18 on Facebook and Instagram channels, and this is a  
19 summary of that.

20 Q. Okay. And what did you do with this  
21 information?

22 A. As mentioned, we had a distribution list  
23 that this was forwarded to.

24 Q. You just sent it on?

25 A. Mm-hmm (affirmative).

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1 Q. Can you look at the email dated Monday  
2 March 1st? And who is this to?

3 A. Kelly at Facebook to me.

4 Q. All right. And she added someone. She  
5 says she added Chelsey Lepage at Facebook. Who is  
6 that?

7 A. I think that she may have been --

8 Q. I'm cheating a little. I went above what  
9 I told you to look at.

10 A. Yes. I'm sorry. I see that now. But I  
11 believe Chelsey was another assistant to Payton, I  
12 think.

13 Q. Okay. And then on the one I did direct  
14 your attention to, March 1st at 5:47, again she says  
15 Hi -- Kelly Perron says: Hi, Carol. And she  
16 attached the latest CrowdTangle insights report for  
17 February 10th to 24, and she says it's attached.

18 A. Mm-hmm.

19 Q. And then she does a summary. And there  
20 again there are certain points she's bolded:  
21 COVID-19 and mental health, vaccine refusal, testing  
22 positive post-vaccination.

23 Do you know whether those were bolded  
24 because those were of particular concern to the CDC?

25 A. No. That's the format of all the reports.

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1           Q.   Okay.  So bolding them was -- your  
2   testimony is bolding them is not because they were  
3   of particular interest to the CDC, that's just how  
4   she did it?

5           A.  I really couldn't say what her thinking  
6   was when she bolded them.

7           Q.  Okay.  When you received it did you have  
8   any understanding about the bolded portions?

9           A.  No.

10          Q.  Were the bolded portions things that you  
11   had particularly spoken with Facebook before in your  
12   telephone conversations?

13          A.  I don't believe so.

14          Q.  All right.

15          A.  Well, can I clarify that a little bit?

16          Q.  Yes, please.

17          A.  I'm sure -- I don't remember discussing  
18   these in terms of the CrowdTangle report or the  
19   things in bold.  I am sure that general discussions  
20   that there was a lot of information on vaccines,  
21   which is one of the bolded words, for example.  I am  
22   sure that did occur.

23          Q.  Thank you.  On March 15 Kelly sends you at  
24   6:19 p.m.

25          A.  Yes.

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1 Q. Sort of goes over, she keeps Chelsey  
2 Lepage in there, and then she -- this time she  
3 summarizes slightly different items:  
4 Post-vaccination guidelines and protocols, vaccine  
5 ingredients and vaccine side effects.

6 A. I see that.

7 Q. And your testimony is the same as to why  
8 they are bolded as before, as far as you know?

9 A. Correct.

10 Q. And you did the same thing with them as  
11 you did before that you've testified?

12 A. I believe so, yes.

13 Q. Let's see. And then at the bottom of that  
14 March 15, she says: This week we also are including  
15 a one off content insights report we did looking at  
16 Spanish language content relative to the U.S. we  
17 thought might be interesting for you.

18 She asks you not to share it externally.

19 Do you recall any other times you got  
20 Spanish language-specific material?

21 A. No. But I didn't recall this time either  
22 until I read it.

23 Q. Okay. And then I'll just -- to finish up,  
24 March -- May 25th. Now, there doesn't seem to be  
25 something for April. Do you know why there would be



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1 a break in the two-week reporting?

2 A. No. I don't recall unless she just sent  
3 it separate from the chain.

4 Q. And then here she's bolded vaccination in  
5 children, healthcare workers and masks and  
6 vaccination; right?

7 A. I see that, too.

8 Q. And do you recall whether you spoke to her  
9 about those things, or that was just her choice to  
10 highlight those?

11 A. We did not discuss with them the issues we  
12 wanted in the CrowdTangle report.

13 Q. All right. And then you say "thanks" in  
14 response to this on 5:26. But we've got a new  
15 person here. Tyler Woods. Who is that?

16 A. I think, but I'm not positive, that he  
17 took over the reports later, so perhaps he was  
18 starting to come in on their team.

19 Q. Okay. We've been going about an hour. I  
20 always give the witness a chance to break if she  
21 wants.

22 A. I'm okay.

23 Q. Okay.

24 A. Thank you for checking.

25 MR. GILLIGAN: Can I ask one question,

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1 John?

2 MR. VECCHIONE: Yeah.

3 MR. GILLIGAN: What is the number of your  
4 last exhibit?

5 MR. VECCHIONE: 42.

6 MR. GILLIGAN: Thank you.

7 And I actually -- that was -- I do have  
8 one that's unmarked that I may use.

9 MR. GILLIGAN: Okay. Just to add a little  
10 suspense. Thank you.

11 MR. VECCHIONE: Mm-hmm (affirmative).

12 (Plaintiffs' Exhibit 8 marked.)

13 BY MR. VECCHIONE:

14 Q. All right. Do you recognize Exhibit 8?

15 A. I haven't finished reading it.

16 Q. Okay. Go ahead.

17 A. Sorry. Okay. Sorry.

18 Q. It's all right.

19 A. Can you repeat the question?

20 Q. Can you identify this document?

21 A. I recognize the first page chain of  
22 emails, but not the previous chain.

23 Q. So you don't -- tell me where -- the first  
24 page at the back?

25 A. Oh, I'm sorry. No, the first page of the

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1 packet.

2 Q. Got it.

3 A. I remembered this email more -- I don't  
4 have a recollection of this previous back and forth.

5 Q. Got it. Well, what's the subject line?

6 A. "This week's meeting."

7 Q. Okay. And by this time were you meeting  
8 with them every week?

9 A. We were -- we were meeting weekly during  
10 parts, so I imagine we were.

11 Q. All right. And can you read the email  
12 from Ms. Theme to you about the meeting on  
13 March 30th, 2021, 2:42 p.m.?

14 A. Yes. "Hi, Carol, hope all is well as it  
15 can be. At least spring is making an appearance. I  
16 wanted to surface any misinfo questions your team  
17 may have for the team that I had briefing last time.  
18 They are available to attend again, but also want to  
19 make sure that we are answering any of your team's  
20 questions."

21 Q. All right. What's the briefing she refers  
22 to?

23 A. I don't recall the briefing specifically,  
24 but I do recall her bringing in people from their  
25 Trust and Safety or Misinformation teams -- I'm not

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1     sure what they called the team -- to talk to us  
2     about misinformation at some weekly meetings. I  
3     think that's probably what this is in reference to.

4             **Q. Why is she offering to surface misinfo**  
5     **questions and to answer your team's questions?**

6             A. Because I think -- I can't say for sure  
7     what she was thinking.

8             **Q. What's your understanding?**

9             A. But I think it was because we -- we had  
10    asked questions about what they were seeing in terms  
11    of misinformation and inquired about any activities  
12    they were undertaking. And I believe this was an  
13    offer to sort of get back to us on any of those  
14    questions.

15            **Q. All right. That you had?**

16            A. Yes.

17            **Q. Given her. Thank you.**

18            A. Yes.

19            **Q. Let's clean up the record a little. That**  
20    **you had -- the questions that you had proposed to**  
21    **her?**

22            A. I think it was questions asked within the  
23    meeting, but.

24            **Q. Got it.**

25            A. I'm not 100 percent sure because I don't

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1 know the timing of that meeting, but I believe  
2 that's what this is in reference to.

3 **Q. And can you read your response at**  
4 **3:08 p.m.?**

5 A. "Hope all is well, too. I plan to join  
6 and listen to the 3:30 meeting, FYI. I added this  
7 part in yellow to our chain on turn.io so you  
8 probably missed it. Did you have thoughts on how we  
9 can regularly meet with Census? I will also check  
10 back with others to see if they have other Qs that  
11 went unanswered and get back to you."

12 Do you want me to keep reading?

13 **Q. No, you can stop.**

14 A. Okay.

15 **Q. But what is "turn.io"?**

16 A. This was another project that we were  
17 working on with WhatsApp.

18 **Q. And what was that project?**

19 A. I believe this was using WhatsApp to -- so  
20 people could use it, they could look up ZIP codes to  
21 find vaccines.

22 **Q. Okay.**

23 A. And maybe, I'm speculating, there was also  
24 a Spanish offering for vaccine information on  
25 WhatsApp. It was one of those.

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1 Q. Got it. Why is Census involved in your  
2 coordination with Facebook at this time?

3 A. We had entered an IAA with Census to help  
4 advise on misinformation.

5 Q. And an IAA is?

6 A. Interagency agreement.

7 Q. All right. Did the CDC ever use any  
8 software programs developed by Census that enabled  
9 the CDC to track the viewpoints of U.S. citizens?

10 A. No.

11 Q. Did the CDC ever gain access to or in any  
12 way receive information about the viewpoint of U.S.  
13 citizens on COVID masking or vaccination from  
14 Census?

15 A. We likely did because they provided  
16 reports on misinformation that they were seeing to  
17 us.

18 Q. Did the CDC ever share data on the  
19 viewpoints of U.S. citizens with the Census?

20 A. I don't recall if we did.

21 Q. You did share the CrowdTangle with them?

22 A. Yes. Can you reask the question?

23 Q. I will. Did the CDC ever share the data  
24 on the viewpoint of -- the viewpoints of U.S.  
25 citizens that CDC was seeing with the Census?

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1           A. You refer to it as data. I don't recall  
2 sharing data. I do recall sharing social media  
3 listening reports such as this, or the publicly  
4 available vaccine confidence reports that talk about  
5 what people are talking about, and probably the  
6 JIC's research, you know. They had a standing  
7 summary of what was being discussed. I suspect I  
8 shared that, too, with Census.

9           **Q. The JIC? What kind of research, the?**

10          A. I mentioned the JIC research team that  
11 looked at what the conversations were on news,  
12 social media and did summaries of that for everyone  
13 in the response.

14          **Q. All right. And did information come back**  
15 **from the Census to CDC about what they were finding?**

16          A. My recollection is that the Census did  
17 provide us with the key themes they were seeing  
18 around misinformation during the times that they  
19 were looking at it.

20          **Q. Who was at the meeting that Ms. Theme**  
21 **references and that you refer to in the next email?**

22          A. The next email, which email?

23          **Q. So above it. It says -- oh, hang on.**  
24 **I'll tell you in a second.**

25                **"Yes, I did see and will know in a few**

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1 hours."

2 Hang on for a second.

3 So I took it to mean that this March 30th,  
4 3:16 email that she says: "Hi, Carol, Yes, I did  
5 see and will know in a few hours, I'm told if we  
6 plan to present for Census Thursday or if it needs  
7 more work."

8 And then you say that "I didn't ask Census  
9 if they had questions."

10 Do you know if there was a meeting with  
11 Census on or about that time?

12 A. I don't --

13 Q. Okay.

14 A. -- remember enough detail to answer the  
15 question. Sorry.

16 Q. So in this March 30th, 2021 at 7:38.

17 A. Yes.

18 Q. There you say: "I didn't ask Census if  
19 they had questions, but I know they were hoping to  
20 go over the deck they had."

21 And is that the one you sent them or  
22 Facebook sent them, or did they create that  
23 themselves?

24 A. I don't know for sure. I'm interpreting  
25 from this email that the Census created it, but I do



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1 not know.

2 Q. All right. "And discuss how to engage on  
3 a more regular basis."

4 Do you know if they ever decided to engage  
5 on a more regular basis?

6 A. With -- about their activity, or about  
7 CDC?

8 Q. Yeah, with Facebook.

9 A. I don't know what Census did directly with  
10 Facebook.

11 Q. And then I'll ask you to take a look at  
12 the 3:16 again. She says: It would be great to  
13 have questions that may not have been answered from  
14 your team on misinformation. She says "misinfo",  
15 but I'm using the full word.

16 And is she looking -- is it your  
17 understanding she's looking for those answers from  
18 Census that you didn't have, CDC?

19 A. Let me reread this chain.

20 Q. Go ahead.

21 A. Sorry. Can you repeat the question?

22 Q. I will withdraw the question for a moment.

23 A. Okay.

24 Q. Just take a look at March 30th, 7:46 as  
25 well. She writes to you, Carol: "Hi, Carol. Yes,

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1 I think it's good to have questions from Census to  
2 make sure we have the right person. I can ask Liz  
3 to join again so she can be asked questions/provide  
4 more information about influencers and I have noted  
5 your question about removals and will tee that up as  
6 well."

7 What was your question about removals?

8 A. I -- reading in this email?

9 Q. Yeah.

10 A. I'm saying -- the email before this I'm  
11 saying the team is still interested in more info  
12 about how you analyze the data on removals. And my  
13 general recollection where this question came from  
14 was that we -- the -- that I think there was  
15 wondering if they delete the info will we know those  
16 myths or information so we could update  
17 communication activity. So if they were deleting  
18 content would we know what the themes were.

19 Q. And did you ask them to remove any  
20 content?

21 A. No. This was -- this was when -- this was  
22 a meeting where we were just asking what -- how that  
23 worked and would there be data, would we be able to  
24 see in CrowdTangle or other reports like what kind  
25 of themes were removed so we would still have the

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1 full picture of areas of confusion.

2 Q. All right. And if you look at your March  
3 31st, 2:07 p.m., and you say what "Census mentioned  
4 they'd like to discuss." "It looks like the post  
5 from last week's deck about infertility and side  
6 effects have all been removed. Were those  
7 re-evaluated by the moderation team or taken down  
8 for another reason?"

9 What are you saying there?

10 A. It looks to me like I cut and pasted this  
11 from something that Census had said, and I don't  
12 have good recollection of what this was on  
13 March 31st.

14 Q. Then you've also cut and pasted: "One of  
15 the main themes we're seeing and from the  
16 CrowdTangle report is local news coverage of deaths  
17 after receiving the vaccine. What's the approach  
18 for adding labels to those stories?"

19 Why would you or Census want them to add  
20 labels to those stories?

21 MS. SNOW: Objection. Calls for  
22 speculation and mischaracterizes the testimony -- or  
23 the document.

24 BY MR. VECCHIONE:

25 Q. You can answer.

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1           A. I don't think we were asking them to add  
2     labels, from what I'm reading here. We were asking  
3     them what their approach for labels were.

4           **Q. Then they have asked: "Can we add the**  
5     **Census team to CrowdTangle?"**

6                     **Hadn't it already been added to**  
7     **CrowdTangle by this time? Haven't we established**  
8     **that?**

9           A. There were two different offerings for  
10    CrowdTangle. They had allowed us to directly log  
11    into CrowdTangle and run our own reports or  
12    searches. I believe that started back in, you know,  
13    March or April 2020. Then they sent the reports.  
14    So this appears to be to log in to CrowdTangle.

15           **Q. Then what did you mean by your team is**  
16    **going to consider how you might want to engage with**  
17    **CDC Census team routinely and get back to us?**

18           A. I don't know specifically this day this  
19    email what I meant. But I do know that we generally  
20    discussed, you know, how we should talk about  
21    misinformation because they had already been working  
22    with Census, on their own Census misinformation, and  
23    I wanted to know what was best for them for engaging  
24    on any topics that we might want to discuss.

25           **Q. All right. Do you know what Facebook was**

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1 told previously about engaging with CDC and Census  
2 on this?

3 MS. SNOW: Objection. Vague, calls for  
4 speculation.

5 BY MR. VECCHIONE:

6 Q. You can answer.

7 A. Can you rephrase the question?

8 Q. Yeah. They were already engaging, it  
9 seems to me, with CDC and Census at this time. Do  
10 you know if there was anything additional from what  
11 we've discussed about such engagement that's causing  
12 them to ask this question?

13 A. Causing them to ask what question?

14 Q. About closer engagement with the Census,  
15 and you asking to have -- "can we add the Census  
16 team to CrowdTangle?" Do you know what --

17 MS. SNOW: Objection. Mischaracterizes  
18 the document.

19 BY MR. VECCHIONE:

20 Q. It's okay. You can answer if you  
21 understand. I'm trying to understand. It seems  
22 that Facebook has been talking to CDC and Census  
23 throughout for a while now. And yet here is a  
24 request that they want a different CrowdTangle, as  
25 you've explained.

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1 MS. SNOW: Objection. It assumes facts  
2 not in evidence.

3 BY MR. VECCHIONE:

4 Q. You can still answer. I'm trying to  
5 understand what is happening in this series of  
6 emails, since they have already been sending you the  
7 CrowdTangle information. You've explained that  
8 there was a different CrowdTangle information that  
9 Census might want; right? That is --

10 A. I think it was the log-in to the  
11 CrowdTangle.

12 Q. Okay. Well, I'll give you an example. So  
13 Ms. Theme asks: Yes, I think it's good -- this is  
14 at 7:46 on March 30th, said: "I think good to have  
15 question from Census so we make sure we have the  
16 right person."

17 So my question is, is that the right  
18 person to answer those questions to the Census from  
19 Facebook? What's your understanding?

20 A. I don't know this chain of emails  
21 specifically, but I believe it was likely in  
22 reference to just me mentioning to Payton that we  
23 were partnering with the Census to learn more. We  
24 had been discussing things, and we were going to  
25 have some collective questions that we would like to

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1 discuss at a future meeting.

2 Q. Okay. What's the amplification side at  
3 March 30th at 7:38? You are going to ask Liz about  
4 what is being done on the amplification side. What  
5 does that mean?

6 A. I don't know why I was asking that.

7 Q. And why did you want to get a better  
8 understanding of how Facebook was working with  
9 influencers?

10 A. I don't remember the meeting before that,  
11 so I'm not sure what that is in reference to.

12 Q. And it says the team's interested in more  
13 info on how you analyze the data on removals.

14 Why are you asking about how Facebook  
15 operates on removals?

16 MS. SNOW: Objection. Asked and answered.

17 A. I did answer it previously.

18 BY MR. VECCHIONE:

19 Q. I don't believe I have directed you to  
20 that exact portion of this, and I would ask the  
21 witness to answer unless she's being instructed not  
22 to.

23 MS. SNOW: No, you may answer.

24 A. Okay. What I think this was about was I  
25 believe the teams that were looking at, like, our

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1 research reports, or our vaccine confidence report  
2 were wondering if the data was removed if it would  
3 show up in the report, so would they be missing gaps  
4 or information because the posts were removed.

5 That's what I believe that this question is about.

6 BY MR. VECCHIONE:

7 Q. All right. CDC wasn't concerned that they  
8 weren't removing materials fast enough?

9 A. That's not what I believe was being  
10 discussed here. This was about the data that we  
11 could get so we had a full picture on confusion so  
12 that we could adjust communication materials, or  
13 ways that we were communicating. That's what I  
14 believe that that's in reference to.

15 And you know what, I have a clarification.

16 Q. Go right ahead.

17 A. You asked me what the amplification  
18 side --

19 Q. Yes.

20 A. -- and the influencers. Now that I'm  
21 remembering this, I think that it it was likely  
22 about how to promote how to get a vaccine, or where  
23 to get a vaccine and I think that was all part of  
24 that conversation.

25 Q. All right. Let's go to the March 31st,



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1 2021 at 2:07, the one you've told me you've cut and  
2 pasted from Census, at least those bullet points.

3 A. You mean March 31st?

4 Q. March 31st at 2:07.

5 A. Yes.

6 Q. It says: "Were those reevaluated by the  
7 moderation team or taken down for another reason?"

8 Do you know if that refers to a moderation  
9 team at CDC or Facebook?

10 A. It must have been Facebook because we  
11 don't have a moderation team at CDC.

12 I'd also like to clarify that I think I  
13 probably cut and pasted it. I don't know for sure  
14 that I did.

15 Q. That's fine. Got it. I follow you.

16 Why do you -- do you know why you wanted  
17 to know what the approach for adding labels to the  
18 stories about deaths after receiving the vaccine  
19 was?

20 MS. SNOW: Objection. Asked and answered.

21 A. I don't remember this specific set of  
22 conversation, or why we were asking about that any  
23 longer.

24 BY MR. VECCHIONE:

25 Q. Okay. Do you know -- so you're discussing

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1     **talking to Census at some point. Do you know**  
2     **whether that conversation ever happened, a**  
3     **conversation with -- regarding this string of emails**  
4     **with Census, CDC and at Facebook?**

5             A. I don't know that we were discussing the  
6     string of emails, but there were meetings where  
7     Census, myself and Facebook were on calls.

8             **Q. Okay. And do you recall what you**  
9     **discussed?**

10            A. My memory is we had general conversations  
11     about what were opportunities to address  
12     misinformation. And things like in this chain I  
13     believe were probably discussed, but I don't have  
14     specific memory of it.

15            **Q. Do you know who your contact was at**  
16     **Census, like who was the main person at Census on**  
17     **this aspect of the CrowdTangle and dealing with**  
18     **Facebook?**

19            A. There were a couple of people from Census  
20     that we were talking with. I only remember two of  
21     the names. One was Christopher Lewitzke, who I  
22     believe was a contractor for them. And then Jen  
23     Shopkorn, I think I'm saying it correctly. I  
24     believe she was their director for digital.

25            **Q. Thank you.**

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1           A. But there were a couple of others that  
2 typically participated.

3           Q. And then March 31st at 2:18 Ms. Theme  
4 writes you: "Hi, Carol we are working on a proposal  
5 how set up sharing partnership on the misinformation  
6 items, what would it look like, so we can discuss  
7 Thursday. Lots of team members out the last two  
8 weeks due to all the holidays, but that is the plan  
9 so we can discuss on the Thursday call."

10           Do you know whether that meeting, the  
11 Thursday meeting, to set up sharing partnerships on  
12 misinformation occurred?

13           A. I don't remember if this specific meeting  
14 occurred.

15           Q. Would you have a calendar that would tell  
16 you?

17           A. Yes.

18           MR. VECCHIONE: I would ask counsel to  
19 produce that calendar of the date of that meeting.

20           MR. GILLIGAN: We'll take your request  
21 under advisement.

22           MR. VECCHIONE: Thank you.

23 BY MR. VECCHIONE:

24           Q. And once again would you have notes or  
25 recordings of that conversation?

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1           A. We never recorded the calls. If I had --  
2 I didn't take many notes, but if there was anything  
3 it would be in Word or email.

4           MR. VECCHIONE: You can put 8 aside,  
5 Exhibit 8 aside.

6           (Plaintiffs' Exhibit 9 marked.)

7 BY MR. VECCHIONE:

8           Q. In this, if you'll just an initial look at  
9 it you can tell me. I just ask you to -- I'd like  
10 you to identify it and tell me the date of the  
11 email.

12          A. The subject is Misinfo on two issues. And  
13 the date of the email is May 6, 2021.

14          Q. All right. You can continue to read it.

15          A. Read the email?

16          Q. Yeah.

17          A. "Payton, Genelle" --

18          Q. No, no. I mean, to yourself.

19          A. Oh.

20          Q. Just scan through it.

21          A. Sorry. Thank you.

22          Q. I want you to be a little familiar with  
23 it.

24          MR. GILLIGAN: Good clarification.

25          A. Okay.

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1 BY MR. VECCHIONE:

2 Q. All right. So can you tell us why you  
3 were flagging misinformation about the vaccines for  
4 Facebook?

5 MS. SNOW: Objection. Mischaracterizes  
6 the document.

7 BY MR. VECCHIONE:

8 Q. Well, let's take a look at it for a  
9 moment. It's from you; right?

10 A. Yes.

11 Q. And then it's to Ms. Theme under a new  
12 name Gennelle Adrien. Do you know her and what her  
13 role was?

14 A. I think she was one of Payton's  
15 assistants.

16 Q. All right. And then you're cc'ing Sam  
17 Huxley at [REDACTED]@Reingold.com. Do you know who that  
18 is?

19 A. Yeah, now that I see the name. Sam was a  
20 contractor for Census that was often on our phone  
21 calls with Christopher and Jen.

22 Q. And that's Christopher Lewitzke; right?

23 A. Yes.

24 Q. And then Jennifer Shopkorn, I apologize if  
25 you told me who that was, but who was that?

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1           A. She's with Census, and I believe she's the  
2 director for their digital team.

3           **Q. And Lynn Sokler?**

4           A. Lynn Sokler is a counterpart of mine in  
5 OADC who was working on this partnership with Census  
6 along with myself.

7           **Q. All right. And then it says:**

8           **"Payton/Genelle. As mentioned, here are two issues**  
9 **we are seeing a great deal of misinfo on that we**  
10 **wanted to flag for you all -- vaccine shedding and**  
11 **microchips"; right? You wrote that?**

12          A. Yes.

13          **Q. Can you tell us why you were flagging**  
14 **misinformation about the vaccines for Facebook?**

15          A. Because we had had conversations with  
16 Facebook about ways that we could address  
17 misinformation, and my recollection is that one  
18 suggestion that was -- that came up in that  
19 conversation was to let them know if we were seeing  
20 major themes that CDC had scientific information on,  
21 or had web content that would address.

22               I believe that is why I was sending these,  
23 because these were two large areas of  
24 misinformation.

25          **Q. What did you mean by the term "flag" or**

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1     **flagging?**

2             A.   Pointing out.

3             **Q.   What was the expectation of what Facebook**  
4     **would do when something was flagged?**

5             A.   I don't recall having a specific  
6     recollection of what I thought that they would do.

7                     I do know that the platforms have a  
8     variety of ways to address misinformation. They  
9     might tag it as something that people should look  
10    more into. I think that they have the -- I think,  
11    but I do not know, that they have the ability to  
12    control how often some of these things show up in  
13    peoples' feeds. And I do know that removing them is  
14    an option that they could consider.

15                    So I didn't know exactly what they might  
16    do with it, but I felt like it was worth pointing  
17    out what we knew, that we had seen these myths and  
18    that we were going to have information up soon.

19             **Q.   All right. And what was the consequence**  
20     **to Facebook if they didn't do anything with your**  
21     **flagging of these items?**

22             A.   Nothing.

23             **Q.   All right. What were you hoping to**  
24     **accomplish by flagging these items for Facebook?**

25             A.   I mean, our goal always is to be sure that

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1 people have credible health information so that they  
2 can make the correct health decisions for  
3 themselves. There were a lot of things circulating  
4 that were not accurate information about COVID. And  
5 so we were trying to point out and make the credible  
6 information more available to users.

7 **Q. How did you decide on these particular**  
8 **posts?**

9 A. I don't remember specifically this  
10 conversation, or what made us decide. But I do know  
11 generally that these were two very high-volume  
12 misconceptions online at the time about vaccines.

13 **Q. All right. Do you recall whether you had**  
14 **any criteria in determining which posts to flag?**

15 A. I don't recall that we had any criteria on  
16 what we pointed out to Facebook other than it had to  
17 be something that was in CDC's lane that we had  
18 information for, you know, to offer about it, and  
19 something that had been -- you know, was high  
20 volume, that was worth pointing out to this entity.

21 **Q. Did you or anyone at CDC have concerns**  
22 **about the government working with Facebook and**  
23 **telling them what should be flagged or not?**

24 MS. SNOW: Objection. Mischaracterizes  
25 testimony, calls for speculation.



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1 BY MR. VECCHIONE:

2 Q. You can answer.

3 A. Can you rephrase the question again, or  
4 say it again?

5 Q. Yeah. Did you or anyone at CDC have any  
6 concerns about CDC or the government flagging  
7 materials for Facebook when you knew they took some  
8 things down?

9 A. I can't speculate what others at CDC might  
10 have thought about it. Personally, because I didn't  
11 believe we were asking them to remove content  
12 specifically, I did think getting credible  
13 information out was important.

14 Q. Where did this information about  
15 microchips and the shedding, what kind of  
16 information did the Census team have on those posts  
17 at that time?

18 A. My recollection is that we were pointing  
19 out to Facebook that there were these themes going  
20 around pretty heavily, and these probably came from  
21 the social listening tools, you know, that can  
22 consolidate examples. And we provided some examples  
23 of what we meant.

24 Q. Okay. You can put that aside.

25 A. Thank you.

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1 (Plaintiffs' Exhibit 10 marked.)

2 BY MR. VECCHIONE:

3 Q. And, again, I'll give you a chance to read  
4 it, but if you could just identify the document and  
5 the subject line?

6 MR. GILLIGAN: The document being  
7 Exhibit 10?

8 MR. VECCHIONE: Exhibit 10.

9 A. It says: Subject CV19 misinfo reporting  
10 channel. May 10, 2021.

11 BY MR. VECCHIONE:

12 Q. All right. What is -- I presume CV19 is  
13 COVID-19?

14 A. Yes.

15 Q. "Misinfo" is misinformation?

16 A. Yes.

17 Q. All right. What is the COVID-19  
18 misinformation channel?

19 A. Well, I don't think I -- just rereading  
20 this email, I don't think I understood this at  
21 first, what she was referring to. I think I thought  
22 that this was CrowdTangle, just by reading the  
23 chain, but I now know what it was was Facebook  
24 apparently has a portal or reporting channel where  
25 you can report misinformation or threats or things

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1 from a specific log-in that I believe they only  
2 provide to like federal agencies.

3 **Q. All right. And who used it at the CDC?**

4 A. To my recollection, the only person that  
5 ever logged in at CDC was Brook Aspinall.

6 **Q. Who was that?**

7 A. She was part of our social media team.

8 **Q. For what?**

9 A. For COVID.

10 **Q. For what did she log on?**

11 A. Oh. Why did she log on?

12 **Q. Yeah.**

13 A. My memory is that we log on one time to  
14 see what it was -- what the system was and  
15 understand what we could do in it. And she logged  
16 on one time, and I think reported two or three -- I  
17 don't remember what they were -- two or three posts  
18 or threats or one or the other.

19 **Q. All right. Would you have a record of**  
20 **what she put on there?**

21 A. I believe so. But I only really remember  
22 this from pulling documents at some point related to  
23 this litigation earlier in the process. I recall  
24 there was an email that listed it, but I don't  
25 remember what they said. But I believe that there

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1 is a record of it because I recall seeing it during  
2 that process.

3 Q. All right.

4 MR. VECCHIONE: I would request that as  
5 well, Counsel. But I'll put it in writing.

6 BY MR. VECCHIONE:

7 Q. Well, I'll just ask this question. I  
8 usually ask this question earlier, but I might as  
9 well. In preparation for your deposition today, did  
10 you review any documents?

11 A. No. Well, we -- the only one I reviewed  
12 happened to be one of the ones you had during our  
13 practice.

14 Q. Good. All right. That's fine. Do you  
15 know which one it was?

16 MS. SNOW: Objection.

17 A. Oh, sorry.

18 MS. SNOW: To the extent this calls for --

19 MR. GILLIGAN: Does call for.

20 MS. SNOW: The question calls for  
21 information that's covered by the attorney-client  
22 privilege. So I direct the witness not to answer.

23 MR. VECCHIONE: No, it doesn't. What  
24 she's reviewed I'm allowed to know. That's --

25 MR. GILLIGAN: Not if it didn't refresh

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1 her recollection.

2 MS. SNOW: Yeah.

3 MR. VECCHIONE: Doesn't matter. She  
4 reviewed it. I'm allowed to know it.

5 MR. GILLIGAN: No, you're not.

6 MS. SNOW: Not if it did not refresh her  
7 recollection about the facts.

8 MR. VECCHIONE: She's been shown the  
9 document today. I'm allowed to know which one she  
10 reviewed if she's been shown it today.

11 MS. SNOW: You're asking about documents  
12 that --

13 MR. VECCHIONE: That she saw today.

14 MS. SNOW: -- she reviewed in  
15 preparation --

16 MR. VECCHIONE: Yeah.

17 MS. SNOW: -- for the deposition?

18 MR. VECCHIONE: Yes.

19 MS. SNOW: Yes, that is covered by  
20 attorney-client.

21 MR. VECCHIONE: She said she's been shown  
22 it today. There is no attorney-client privilege for  
23 that.

24 MR. GILLIGAN: I don't know that -- I  
25 don't know that she said that she was shown it

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1 today.

2 BY MR. VECCHIONE:

3 Q. I'll ask. Were you shown it today?

4 A. One of them, yes.

5 MR. GILLIGAN: It's still --

6 MR. VECCHIONE: It's an improper  
7 objection, but it's not that important, so I'm going  
8 to let it go for now.

9 MR. GILLIGAN: All right. Well, if you  
10 care to raise the issue again later, we'll be happy  
11 to discuss it later.

12 BY MR. VECCHIONE:

13 Q. All right. So who's responsible for  
14 creating this channel, this COVID-19 channel?

15 A. Well, I have a small recollection of this  
16 channel, and I never looked at it myself to my  
17 memory. But it's, to my understanding, you log onto  
18 Facebook as an administrator, and it's something  
19 that they make available to you as a federal agency.

20 Q. Okay. So Facebook made it?

21 A. Yeah. It's like a place you can go and  
22 report something. I -- "channel" does feel like an  
23 odd description of it to me.

24 Q. Okay. How do you know that it was made  
25 available to, like, law enforcement? Do you know

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1     that from this document, or do you know that from  
2     your own memory?

3             MS. SNOW: Objection. Facts not in  
4     evidence.

5             MR. VECCHIONE: She testified to it a  
6     minute ago.

7             MS. SNOW: Okay. Sorry. My apologies. I  
8     missed that. Sorry.

9     BY MR. VECCHIONE:

10            Q. So how do you know that? Like, why is  
11     that your understanding?

12            A. I guess I can't say I know that. I have a  
13     vague recollection of it being described to me as  
14     something that other, like, official groups could  
15     use to report, that it wasn't something that was  
16     generally available. But I might be wrong.

17            Q. Okay.

18            A. I don't know for sure.

19            Q. That's fine. Now, at the end of this  
20     email there is a list of other email lists; right?  
21     She says: Thank you, Genelle. And then she lists  
22     some government people and some Census people and  
23     CDC people and Reingold again.

24            A. I see it.

25            Q. So those -- and she asks you to confirm if

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1 the below emails are correct for onboarding to the  
2 reporting channel; right?

3 A. Yes.

4 Q. All right. Are any of those people the  
5 Ms. Aspinall I think you told me before?

6 A. Those emails are so difficult, I don't  
7 know. Perhaps it's [REDACTED] or [REDACTED] or [REDACTED], but I don't  
8 know peoples' user IDs, so I can't answer.

9 I would also like to clarify that when I  
10 was reviewing this based on this chain, I thought  
11 this was about CrowdTangle access.

12 Q. Okay. At that time?

13 A. At this -- yes, so.

14 Q. You don't believe that now, but that's  
15 what you thought when you received it?

16 A. Yes. I can see in this chain that that's  
17 what I thought was happening with this.

18 Q. All right. Do you know how this list of  
19 employees, whether you recognize them or not, do you  
20 know how the people for access were selected,  
21 like --

22 (REPORTER'S NOTE: Loud audio noise heard  
23 over loud speakers in room.)

24 (Comments off the record.)

25 MR. VECCHIONE: Let's go off record.



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1 THE VIDEOGRAPHER: Off record at 11:51.

2 (Comments off the record.)

3 THE VIDEOGRAPHER: Back on record at  
4 11:53.

5 BY MR. VECCHIONE:

6 Q. All right. So the question is, the  
7 question on the floor, before we were so rudely  
8 interrupted, was how was this list of employees or  
9 contractors selected?

10 A. I don't know. Maybe from a meeting  
11 invite. Maybe people that were on a meeting, but I  
12 don't know.

13 Q. Do you know whether there was any training  
14 involved in using this COVID-19 misinformation  
15 channel?

16 A. I don't remember any training. The email  
17 looks like perhaps there was.

18 Q. Do you know whether CDC employees or  
19 contractors asked to flag or report certain kinds of  
20 information to Facebook?

21 A. Yes. On occasion there were people saying  
22 "we saw this." Usually they were around threats  
23 that they wanted us to report, which you can do as  
24 an administrator for Facebook now.

25 In terms of this, I only remember the one

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1 occasion that I mentioned a minute ago.

2 Q. Was Facebook asked to flag certain types  
3 of material to report to CDC or to Census?

4 MS. SNOW: Objection. Vague.

5 BY MR. VECCHIONE:

6 Q. I mean, I have asked whether or not CDC  
7 asked to flag things to Facebook, and you've  
8 answered that question. Did Facebook ask CDC to  
9 flag things to them?

10 A. Well, the way I have been using "flag" in  
11 these emails is to point out.

12 Q. Right.

13 A. I don't recall asking them to point  
14 anything out to us, but I can maybe recall us saying  
15 something are you seeing this too, are y'all  
16 considering this too?

17 Q. Do you know whether or not we have any  
18 documents that were given to CDC staff or  
19 contractors regarding the training on this COVID-19  
20 channel?

21 A. I don't recall.

22 Q. Okay. Did the meeting -- I think it was  
23 from May 18th. Let me look at the document for a  
24 second.

25 Okay. You had a meeting that she -- that

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1 Genelle Adrienne refers to on May 7, 2021, 11:27  
2 a.m. "Hi, Carol following up from our meeting  
3 yesterday it looks like Monday May 17th at 12 will  
4 work for onboarding meeting."

5 Do you know whether that onboarding  
6 meeting ever occurred for this channel?

7 A. I don't have any recollection of the  
8 onboarding meeting.

9 Q. And once again would you have a calendar  
10 mark for that onboarding meeting, if it occurred?

11 A. If I was invited I would.

12 MR. VECCHIONE: And once again, I'll put  
13 that in a letter to you, Counsel.

14 MS. SNOW: We'll note that document  
15 discovery has closed, but we'll take it under  
16 advisement.

17 MR. VECCHIONE: I got you.

18 BY MR. VECCHIONE:

19 Q. And you can put Exhibit 10 aside.

20 Oh, you know, might need it for this, but  
21 I don't know if you do.

22 The Reingold contractors. Why did CDC  
23 need contractors? What were they doing? Did they  
24 have concern -- let me withdraw the question.

25 Why did CDC have the contractors, the

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1     **Reingold contractors, involved in this?**

2                   MS. SNOW:  Objection.  Mischaracterizes  
3     testimony.

4     BY MR. VECCHIONE:

5                   **Q.  Was it Census?**

6                   MS. SNOW:  Objection.  Vague.

7     BY MR. VECCHIONE:

8                   **Q.  Why were the Reingold contractors involved**  
9     **in all this?**

10                  A.  They were contractors working with Census.

11                  **Q.  Okay.  Did you know why they were**  
12     **contractors and not Census directly?**

13                  A.  No.

14                  **Q.  Do you know if their duties involve**  
15     **content moderation?**

16                  A.  I don't.

17                  **Q.  Do you know whether their duties involve**  
18     **flagging or reporting on certain kinds of opinions**  
19     **expressed by U.S. citizens?**

20                  MS. SNOW:  Objection.  Vague, calls for  
21     speculation.

22     BY MR. VECCHIONE:

23                  **Q.  You can answer.**

24                  A.  I really don't know.  I wouldn't know what  
25     they had them do.

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1                   MR. VECCHIONE: All right. That's it for  
2   10. I could go on to 11, and or we could break here  
3   and fix the sound. You go -- you could have lunch.  
4   Decide what the witness --

5                   MR. GILLIGAN: It's up to the witness to  
6   break.

7                   THE WITNESS: Let's break. Let's break.

8                   MR. VECCHIONE: There you go.

9                   THE VIDEOGRAPHER: Off record at 11:59.  
10                   (Lunch recess 11:59 a.m. - 12:51 p.m.)

11                   THE VIDEOGRAPHER: Back on record at  
12   12:51.

13                   MS. SNOW: And, defense counsel, just like  
14   to note that we've reestablished the Zoom connection  
15   and shared a call-in phone number again, which is  
16   being forwarded to plaintiffs' counsel pursuant to  
17   the previous agreement that it not be shared, the  
18   Zoom link not be shared beyond plaintiffs' counsel  
19   or the Zoom, or the call recorded using the Zoom  
20   call-in number.

21                   MR. VECCHIONE: That's fine.

22                   (Plaintiffs' Exhibit 11 marked.)

23   BY MR. VECCHIONE:

24                   **Q. All right. Ms. Crawford, I have handed**  
25   **you -- once again can you identify Exhibit 11 and**

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1 then tell me what the subject matter of the -- what  
2 the subject line is, and then you can continue to  
3 read it.

4 A. Agenda item for CDC call this week.  
5 May 20th, '21.

6 Okay.

7 Q. Can you tell me who Liz Lagone is?

8 A. My understanding is that Liz is on their  
9 Trust and Safety team, or the Misinformation team,  
10 which I don't know what the official name of it is.

11 Q. Meaning Facebook's?

12 A. Yes, Facebook's. Sorry.

13 Q. And in these emails Ms. Lagone identified  
14 the, quote, "Content Policies" of Facebook as  
15 guiding which posts get removed; right?

16 A. It says "we may reduce, remove or inform."

17 Q. And I think she describes these policies  
18 as evolving?

19 A. Yes, I see that.

20 Q. Okay. Did you or anyone at the CDC  
21 participate in the crafting of the content policy of  
22 Facebook?

23 A. No.

24 Q. Did you or anyone at CDC contribute to the  
25 terms of service or community standards of Facebook?

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1 A. No.

2 Q. Any other policy at Facebook that they  
3 contributed to?

4 A. No.

5 Q. Did you do so at any other social media  
6 company?

7 A. No.

8 Q. Did you or anyone at CDC ever give input  
9 on what such a policy should look like?

10 A. No.

11 Q. Did you, or --

12 A. I should clarify.

13 Q. Go ahead.

14 A. I'm speaking from my -- no one in my group  
15 or my office. I can't imagine anyone else did.

16 Q. To your knowledge?

17 A. Yes, yes.

18 Q. You're only testifying to your knowledge.  
19 I understand that.

20 A. Yes.

21 Q. Thank you.

22 Did you or anyone at the CDC either advise  
23 or help Facebook on how to enforce or apply their  
24 policies to any particular social media post?

25 A. Not that I recall.

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1 Q. Same question for other social media. Did  
2 you ever -- did you or anyone at CDC help any other  
3 social media company on how they should apply their  
4 policies to -- toward a particular post?

5 A. No. We didn't -- I have never seen their  
6 policies.

7 Q. Did you or anyone at CDC ever discuss with  
8 Ms. Lagone any manner relating to any enforcement of  
9 the policies that she's discussing here?

10 MS. SNOW: Objection. Vague.

11 BY MR. VECCHIONE:

12 Q. Well, she's discussing these policies  
13 here. Did you ever discuss with her their  
14 development and enforcement?

15 A. No. We did not discuss the development of  
16 their policies, or the enforcement of their  
17 policies. What we did provide was scientific  
18 information that I did assume that they might use to  
19 do those things.

20 Q. Okay. I'd like you to take a look at one  
21 of -- she -- Payton Iheme lays out a number of items  
22 that I think she says at May 19th, 4:19: To help  
23 with scoping on your end for Thursday, here's some  
24 of the COVID content items that Liz will be flagging  
25 for you the CDC team.



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1                   And here she seems to be flagging items  
2   for you at CDC. And then she goes through them.  
3   And what did you do when they flagged some of these  
4   to you? What -- why was she flagging those to you,  
5   and then what did you do in response?

6                   MS. SNOW: Objection. Compound.

7   BY MR. VECCHIONE:

8                   **Q. You can answer.**

9                   A. So why were they flagging this to us?  
10   First part. They were wanting our feedback on  
11   whether these things were true or false statements  
12   that they were seeing. Did the CDC have science  
13   around this, did we have content on our website.

14                   Can you refresh me on the second part of  
15   the question?

16                   **Q. And what did you do in response to the**  
17   **flagging?**

18                   A. Typically what we would do is try to  
19   let -- if we knew, if we had something or we had  
20   science on these items, we would point to it or  
21   provide them an answer. If we didn't, we wouldn't  
22   provide it.

23                   My recollection, this might have been one  
24   of the first times they asked in this type of  
25   format. And I think we talked about that on the

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1 call, like, who knew -- some of these people, I  
2 thought, could help answer whether -- what we had on  
3 these topics.

4 Q. All right. And you had -- and let's,  
5 since you just pointed out, we'll just say --

6 A. Mm-hmm (affirmative).

7 Q. -- your response was: Thanks for the  
8 additional info. And then you say you're going to  
9 have these folks joining.

10 And you've got the Census team members  
11 joining this. Cynthia Jorgensen, director of Comms  
12 for NCIRD. What's that?

13 A. National Center for Immunization and  
14 Respiratory Diseases at CDC.

15 Q. "And our joint information center  
16 co-lead." So is she that as well? She's the joint  
17 information center co-lead, or is that a different  
18 person?

19 A. She was serving both roles. She -- we  
20 deployed to the response, and she was -- at this  
21 point in time was deployed as the co-lead for the  
22 joint information center, but her regular job is the  
23 ADCS. So she had a lot of knowledge regarding this  
24 topic.

25 Q. And then you've got Rosie

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1     **Bretthauer-Mueller and Demi Haynes. And they are**  
2     **co-leads for consumer vaccine content development.**

3             **Is that content development on your**  
4     **website at CDC?**

5             A. Yes.

6             **Q. Okay. And they say: "I'm not going to**  
7     **have SME join."**

8             **Is that subject matter experts?**

9             A. Yes.

10            **Q. What are those?**

11            A. That would have been like an actual  
12     scientist that studied these issues, or knew what  
13     the science was on it. When I -- I believe when I  
14     scanned this I thought we probably had readily  
15     answered -- we probably had a lot of this already  
16     addressed on the website, and the content folks  
17     would be able to point that out. We didn't have to  
18     have the expert on the call.

19            **Q. I have -- if you look at 11.**

20            A. Mm-hmm (affirmative).

21            **Q. "Is the claim 'COVID-19 manmade' false,**  
22     **unproven, unsupported by evidence, or true?"**

23            **Do you know whether or not CDC ever**  
24     **responded to that inquiry?**

25            A. I don't know for sure, but I doubt we

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1 would have.

2 **Q. And why do you think that?**

3 A. I don't recall us having any information  
4 on this posted on our website. I know it came up a  
5 lot, but I don't remember us having it like an FAQ  
6 on it.

7 **Q. All right.**

8 A. But I'm not an expert on all the content  
9 we had on the web. I don't develop the content.

10 **Q. I understand.**

11 A. Okay.

12 **Q. I'm just -- I appreciate the information**  
13 **and why you thought it.**

14 I have a -- so this -- Census is now in.  
15 Is this after the IAA you mentioned to me yesterday?  
16 Earlier today. It's not yesterday yet. Before  
17 lunch?

18 A. Yes.

19 **Q. Okay. So what is the -- what's your**  
20 **understanding of what an interagency memo is, or an**  
21 **interagency agreement is?**

22 A. I'm definitely not an expert on IAAs. But  
23 it's an agreement between two agencies to conduct  
24 some kind of work between them. Sometimes you're  
25 given fundings to do it. Usually you are. I

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1 don't -- I wasn't -- I didn't create the IAA, so I  
2 don't have a lot of details on what was in it.

3 **Q. Have you seen it?**

4 A. I do believe I saw it.

5 **Q. Is it related just to COVID, or is it**  
6 **broader than that?**

7 MS. SNOW: Objection. Assumes facts not  
8 in evidence.

9 BY MR. VECCHIONE:

10 **Q. Okay. Is it related to COVID?**

11 A. I cannot say for sure what was stated in  
12 the IAA, but we were only engaging on COVID  
13 misinformation. But we were learning about how they  
14 operated a general misinformation team along the way  
15 to --

16 **Q. How Census did?**

17 A. How Census did it, yes.

18 **Q. And did you -- was part of the IAA --**  
19 **well, I'll ask it in two parts first. Was part**  
20 **of -- was the purpose of the IAA so that CDC could**  
21 **learn what they did and perhaps replicate it?**

22 A. Was that the purpose of the IAA? No, I  
23 wouldn't say it. I think that we were learning from  
24 it to determine if we needed to do it. I really  
25 don't recall the wording in the IAA.

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1           Q. Okay. What was your understanding of what  
2   the AII was about?

3           A. To let us partner with the Census to learn  
4   how they handled misinformation and help us with the  
5   COVID misinformation. We were shorthanded. They  
6   seemed to have more knowledge than we did.

7           Q. All right. And do you know if the IAA is  
8   still in place?

9           A. Well, we haven't been working with Census  
10   in quite some time. I don't know the actual date on  
11   the end of the IAA, though.

12          Q. All right. If you look at item eight of  
13   the items flagged: "COVID-19 vaccine cause bell's  
14   palsy." Do you see that?

15          A. Yes.

16          Q. Do you know whether you gave any input on  
17   that question?

18          A. I don't recall.

19          Q. And how about item number nine: "COVID-19  
20   has 99.96% survival rate"?

21          A. I don't remember what we said about that  
22   one.

23          Q. All right.

24                 MR. VECCHIONE: I will hand over these all  
25   at once because I'm going to ask the same question

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1 about them.

2 MR. GILLIGAN: 31?

3 MR. VECCHIONE: 12. No, no, no, 12  
4 through 14, how about that?

5 (Plaintiffs' Exhibit 12 and Exhibit 13  
6 marked.)

7 BY MR. VECCHIONE:

8 Q. And you don't have to read through these.  
9 You can just look at them all at once. I'll let  
10 counsel look at them for a second, and then I'll ask  
11 the question.

12 Now, I'll just represent to you what these  
13 are, unless you can tell me you've seen them before.

14 A. I haven't seen them before.

15 Q. All right. So Exhibit 12 is a scientific  
16 paper on the relationship between Bell's palsy and  
17 SARS CoV-2, as is 13.

18 Do you know whether or not in relationship  
19 to Exhibit 11 and Bell's palsy, that whether or not  
20 any of these scientific articles or others on Bell's  
21 palsy were flagged by CDC to Facebook?

22 MS. SNOW: Objection. Calls for  
23 speculation. Lack of foundation.

24 BY MR. VECCHIONE:

25 Q. You can answer, if you know.

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1 A. I wouldn't know. I mean, I didn't flag  
2 them.

3 (Plaintiffs' Exhibit 14 marked.)

4 BY MR. VECCHIONE:

5 Q. Okay. And then on 14, Plaintiffs'  
6 Exhibit 14, have you seen this before?

7 A. No.

8 Q. And this is another scientific paper on  
9 the percentage survival rate of COVID patients.

10 Do you know whether this was flagged by  
11 CDC to Facebook or other social media?

12 A. We didn't flag this, or specific things.  
13 We provided CDC content.

14 Q. All right. And that means things that  
15 either CDC had on its website, or it knew  
16 internally?

17 A. I think primarily it was things that were  
18 on CDC's site, but I can't say that for sure. I did  
19 not, not -- none of the communicators answered the  
20 questions directly.

21 Q. Okay.

22 A. Unless we had it on our website.

23 Q. So what you do is would you refer them to  
24 subject matter experts?

25 A. Those questions would -- if they were on



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1 an email, they would go, you know, we would -- I  
2 didn't.

3 **Q. Right.**

4 A. People in the response would ask the SMEs  
5 about them. That's my understanding of what  
6 happened when they were circulated.

7 **Q. So I'm trying to get the trail of how they**  
8 **get -- how Facebook or the other social media get**  
9 **information. You're the contact point oftentimes.**  
10 **They send you things like this?**

11 A. Mm-hmm (affirmative).

12 **Q. Then somebody -- and we've already**  
13 **determined, you're not -- you don't do science,**  
14 **you're a communicator, right? And a tech person?**  
15 **So where do you send this material to get those**  
16 **answers if it's not on the website? Because you've**  
17 **told me if it's on the website we just send it over**  
18 **to them.**

19 A. I didn't even always check to see if it  
20 was on the website myself or in my office. I would  
21 let the communicator that was assigned to whatever  
22 the area was. For instance, Rosie on the Exhibit 11  
23 was working with this area, and she would have the  
24 contacts with the experts.

25 **Q. Okay.**

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1           A. I don't know what they -- how they got the  
2 answers back in every instance.

3           **Q. Because you weren't always the person to**  
4 **send the answer back?**

5           A. I sent the answers back, but I didn't  
6 collect them. Usually they required multiple  
7 experts.

8           **Q. Okay. All right. And in Exhibit 11**  
9 **again -- you can put 12 to 14 aside. Do you know if**  
10 **Cynthia Jorgensen and Rosie Bretthauer-Mueller and**  
11 **Demi Haynes joined the meeting, as indicated?**

12           MS. SNOW: Objection. Vague.

13           MR. VECCHIONE: They're the people she's  
14 going to bring in for the meeting.

15           A. I think they probably did. I don't know  
16 if all three of them did.

17 BY MR. VECCHIONE:

18           **Q. And what is -- do you know what the role**  
19 **is of a co-lead for consumer vaccine content**  
20 **development is?**

21           A. She would help write all the materials on  
22 vaccines that were on the website, or in a fact  
23 sheet.

24           **Q. And do you recall this meeting taking**  
25 **place?**

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1           A. I don't recall the specific meeting. I do  
2 recall meetings such as -- like this. I mean, maybe  
3 it's this one I have in my mind. I don't know for  
4 sure.

5           **Q. Well, if it's -- what was discussed at the**  
6 **meeting, to the best of your recollection?**

7           A. Sometimes in these meetings they would ask  
8 do we know if this is true or false, which is what  
9 they were doing. And then if we knew, the  
10 communicators knew the answer, we would provide it.  
11 If not, I would say, we would say, I'll have to get  
12 back to you later, we'll talk to our SMEs.

13           And then that's why I was referring to not  
14 going to have an SME going, but we can go back to  
15 the group after the meeting if needed was the gist.

16           **Q. Do you have notes or other records of what**  
17 **was said on the call?**

18           A. I didn't take notes. I don't believe  
19 notes were taken.

20           **Q. But once again, on a calendar you might**  
21 **have that calendared?**

22           A. I would have -- the appointment would be  
23 there, but it wouldn't necessarily say if Cynthia  
24 joined or not. She would have been invited.

25           **Q. All right. And we discussed earlier today**

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1 your conversations with at least Facebook, but some  
2 social media on misinformation. And you said it was  
3 on -- I think you said it was on a general level,  
4 you couldn't remember anything specific.

5 After looking at these documents, has  
6 anything changed in your response? Do you remember  
7 any specific misinformation you discussed with the  
8 social media organizations around here, around 2021?

9 A. I mean, I remember seeing this list before  
10 now that you've showed it, but I don't remember what  
11 we sent back, or what we said on the phone  
12 specifically about each of these items.

13 Q. And did you -- did CDC -- when I say "you"  
14 here I mean you or anyone you know at CDC.

15 A. Mm-hmm (affirmative).

16 Q. Ever monitor whether Facebook or other  
17 social media company took down material that you  
18 have indicated was false?

19 A. I do think that Census was at least  
20 periodically checking on things that they had  
21 flagged, or they had seen come up.

22 Q. Okay. Thank you. And why do you believe  
23 that?

24 A. Because I have vague recollections of them  
25 mentioning it or asking it in the meetings, and I

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1 believe that was in one of these exhibits.

2 Q. Got it. That you reviewed during this  
3 deposition, or before?

4 A. In this one.

5 Q. Okay. You can put Exhibit 11 aside.

6 A. Okay.

7 (Plaintiffs' Exhibit 15 marked.)

8 BY MR. VECCHIONE:

9 Q. And let's go to Exhibit 15.

10 MR. GILLIGAN: Just a moment, Counsel,  
11 before you ask your next question.

12 (REPORTER'S NOTE: Mr. Gilligan conferring  
13 with witness.)

14 MR. VECCHIONE: The witness has conferred  
15 with counsel.

16 BY MR. VECCHIONE:

17 Q. And, again, I'd just ask you to identify  
18 it by the subject of the re: line and the date, and  
19 then continue reviewing it.

20 MR. GILLIGAN: Referring to Exhibit 15?

21 BY MR. VECCHIONE:

22 Q. Referring to Exhibit 15.

23 A. "It was this list, sorry. Agenda item for  
24 CDC call this week." It was June 2nd, 2021.

25 Q. Now, please take a look.

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1 A. Okay.

2 Q. All right. Now, I think the end of this  
3 email is pretty much the same as the one that was  
4 Exhibit 14; right?

5 A. It is.

6 Q. So let's just start with the email that's  
7 from Liz Lagone to you on May 24 at 1:57 p.m., and  
8 she ccs Carrie Adams at Facebook, it looks like,  
9 from the email. Who's Carrie Adams?

10 A. She was part of Liz -- of Payton's team,  
11 now Carrie is my main point of contact at Facebook,  
12 Payton has since left.

13 Q. And can you tell me -- so she says on this  
14 email: "Thanks so much again for you and team's  
15 help in debunking a few COVID-19 and vaccine  
16 misinformation claims for us. As a followup to our  
17 meeting, please see the list of claims below with  
18 notes from our conversation last Thursday morning."

19 So if this is Monday May 24th, is it fair  
20 to say that the meeting was Thursday May 20th, if  
21 that's the Thursday of the previous week?

22 A. It appears that way to me too.

23 Q. Okay. So do you recall who met at that  
24 meeting, and where it was?

25 A. Well, as we were discussing on the other

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1 exhibit, it was a phone conference, and I think that  
2 Cynthia and Rosie and Demi may have attended. I  
3 can't say for sure all three of them attended, but I  
4 know that they were at least two of them were  
5 probably on the line.

6 Q. All right. And she's listed a number of  
7 those items that we saw before that they had  
8 questions about. And the first one that she lists,  
9 although it's not in the same order, she sent it to  
10 you earlier; right?

11 A. It does appear in a different order, yes.

12 Q. But, she says: "Is the claim, quote,  
13 'COVID-19 is manmade' false, unproven, unsupported  
14 by evidence or true?" And the answer's:  
15 Inclusive [sic] -- inconclusive; right?

16 And then she also goes on to say: It's  
17 probably from animals jumping to humans.

18 And my question here is she says: The CDC  
19 director in her testimony yesterday said being  
20 manmade was technically possible because we did not  
21 know the origin still.

22 And was that the CDC dir- -- I think I  
23 saw Walensky in this email beforehand. Is that your  
24 understanding of who that is?

25 A. In May that would be Walensky.

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1           **Q. Okay. Now, why is Liz Lagone sending this**  
2   **email to you about -- why is she sending this email**  
3   **to you to confirm the conclusions below about the**  
4   **COVID vaccine?**

5           MS. SNOW: Objection. Calls for  
6   speculation.

7   BY MR. VECCHIONE:

8           **Q. You can answer.**

9           A. I don't know why Liz specifically sent it  
10   for sure. But I -- because I just mentioned -- when  
11   we were talking about the other exhibit -- that we  
12   were communicators and not experts, there were  
13   probably -- I'm sure we were saying we're pretty  
14   sure this is correct. We might have to go back and  
15   check on stuff. And I think she was trying to give  
16   us something to go and follow up.

17           And I can see I said let's -- I'd like to  
18   note that we have no scientific experts on the call  
19   so these are our thoughts, but we'll definitely  
20   check on this on our end.

21           **Q. Okay. So you didn't -- but you didn't**  
22   **respond that she had misheard anything on the**  
23   **conversation; right? You just said you needed to**  
24   **check with scientists; right?**

25           A. Correct. That's what I said in the email.



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1 Q. Okay. And then I will just to -- later on  
2 the COVID-19 vaccine causes various things, these  
3 things had been proposed: Alzheimer's, Prion's,  
4 cytokine storm. And you respond inconclusive. We  
5 don't know right now; right? You just didn't have  
6 anything at hand?

7 A. That appears to be what we said on the  
8 call, and that Liz, in theory, wrote down what we  
9 said correctly.

10 Q. Right.

11 A. That's not clear from this chain.

12 Q. And then --

13 A. But how I'm interpreting it.

14 Q. And then once again the survival rate,  
15 they say it's inconclusive but it's a hard number to  
16 prove, and -- correct, that's what she says?

17 A. "Not able to debunk now, inconclusive.  
18 Scientists would be hesitant to attach a correct  
19 number to the survival rates," so.

20 Q. Okay. Yes. And then it says "Note, this  
21 claim is tied to the VAERS issue."

22 What's VAERS?

23 A. VAERS is a Vaccine Adverse Events  
24 Reporting system.

25 Q. And is it your understanding that doctors

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1     **around the country report adverse events for**  
2     **patients as a matter of course?**

3             MS. SNOW: Objection. Calls for  
4     speculation.

5             A. I'm not an expert on the system.

6     BY MR. VECCHIONE:

7             **Q. But the system, who puts the information**  
8     **there, do you know?**

9             A. I actually believe anyone is able to  
10    report an adverse event. It doesn't have to only be  
11    physicians. It can be any of us that wanted to.

12            **Q. Okay.**

13            A. I believe.

14            **Q. Right. And so it could be someone who**  
15    **doesn't know whether it's connected to the vaccine,**  
16    **or someone else?**

17            A. I think any kind of -- any kind of thing  
18    can be reported.

19            **Q. Okay. In this email do you know who the**  
20    **science experts, the subject matter experts you**  
21    **mention in your email, do you know who they were, or**  
22    **who you checked with?**

23            A. No. Because people deployed in and out of  
24    the response, and I was not usually the person  
25    asking the SMEs directly. It was the communicators

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1 assigned to the topic group such as Rosie who was  
2 the communicator for vaccines. She was talking to  
3 the SMEs.

4 Q. All right. And then would she talk --  
5 could she talk directly to Facebook or the other  
6 social media after that?

7 A. Almost always she'd send back to me, and I  
8 would consolidate responses and send them back.  
9 Sometimes if I was out, Rosie would respond directly  
10 with a copy to me or something. I don't know that  
11 that happened ever, but it might have.

12 Q. All right. Now, on May 24 at 1:57 she  
13 does thank you for your and your team's help in  
14 debunking a few COVID-19 and vaccine misinformation  
15 claims; correct?

16 A. Where do you see the thank you?

17 Q. On May 24th, 2021 at 1:57. The Bates  
18 stamp at the bottom ends in 539.

19 A. Sorry. I'm on the wrong --

20 Q. Yeah.

21 A. Yeah, she does say that. But then I note  
22 that we haven't had scientific experts review this  
23 yet right after she sent that to clarify.

24 Q. All right. But you were going to check  
25 with them so that it could be debunked; correct?

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1           A. Correct. If it was supposed to be  
2 debunked.

3           Q. If it --

4           A. Yes.

5           Q. Yes, if it was. I thought -- I'm not  
6 seeing it now. One second.

7           Ah, here it is on the very first page of  
8 Exhibit 15. Liz Lagone refers to a Sam. "Also I  
9 meant to ask in my email earlier but I recall it was  
10 either you or Sam mentioning that you could share a  
11 transcript." Who's Sam?

12          A. I assume that was Sam with the Census  
13 team.

14          Q. Got it. And have we talked about him  
15 before? Is he --

16          A. We mentioned that he was one of the Census  
17 folks. I didn't remember his name until the  
18 exhibits, but yes.

19          Q. And do you know if the transcript of  
20 Dr. Walensky was just her testimony to Congress, or  
21 something else?

22          A. In re-reading this, my recollection is is  
23 that they asked about this, and several of us said I  
24 think we heard her address this in the press event,  
25 or maybe it was the testimony. I'm not sure. I

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1 guess it was the testimony because I was looking for  
2 the transcript, and we mentioned it. And we were  
3 looking for it because that was the only thing that  
4 we knew of that might exist to help them with their  
5 question.

6 MR. VECCHIONE: All right. You can put  
7 that aside.

8 (Plaintiffs' Exhibit 16 marked.)

9 BY MR. VECCHIONE:

10 Q. And once again if you could just tell me  
11 the subject line and the date, and then --

12 MS. SNOW: And this is Exhibit 16?

13 BY MR. VECCHIONE:

14 Q. Exhibit 16.

15 A. "It was this list, sorry. Agenda item for  
16 the CDC call this week." June 3rd.

17 Q. Okay. Now, let's go to the back again.  
18 And Liz Lagone writes to you on June 1st, 2021,  
19 8:49 p.m.: "Hi, Carol, I hope you're well and had a  
20 restful long weekend. I want to follow up on my  
21 below email and see if you needed any further  
22 information or context about COVID-19 vaccine claims  
23 below. We'd love CDC's help in debunking."

24 And the next one from June 2nd, 2021 at  
25 6:58, that's from you; right?

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1 A. Yes.

2 Q. And that's to Liz Lagone; right?

3 A. Yes.

4 Q. And what -- could you read what you say to  
5 her?

6 A. "Notes below on some. I hope this helps.  
7 I will let you know when we have cleared points."

8 Q. And then stop there.

9 A. Okay.

10 Q. Then "COVID-19 vaccines causing  
11 magnetism." And, surprisingly, "debunked."

12 Then you'll say "will have cleared TP  
13 soon." What's TP?

14 A. Talking point.

15 Q. How does a talking point get cleared?

16 Well, I'll withdraw that. What is a talking point?

17 A. Usually it's a bullet or a paragraph on  
18 whatever the subject is that one could refer to.

19 Q. And how does it get cleared? What's the  
20 process?

21 A. I mean, I'm not sure why I was looking for  
22 TP instead of web content. I don't know if that was  
23 just a mistype or not, but -- or maybe -- maybe it  
24 was going to be a talking point. But usually any  
25 content that's going outside of the agency goes

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1 through a very specific clearance process. There  
2 was a clearance process for COVID. I wasn't -- I  
3 rarely cleared things myself, but there -- many  
4 people have to sign off on content before it leaves  
5 the Agency.

6 Q. Got it. And I'll just notice -- I'll just  
7 point out that the bottom about the COVID-19  
8 vaccines causing erectile dysfunction, again, you  
9 say "will have a cleared TP soon"; right?

10 A. Yeah. I believe thinking more about why I  
11 said TP, we often provide media with talking points  
12 when they ask questions. And that was -- we were  
13 also looking at things that we were providing to  
14 media in addition to web content because that was  
15 similar, there were similar questions coming. So  
16 perhaps that's why this says TP instead of web  
17 content.

18 Q. All right.

19 A. I can't say for 100 percent sure, but I  
20 think that might be likely.

21 Q. And you use web content in other -- in  
22 other of these points. So my question there is with  
23 respect to items 3, 4 and 6, which, I think if you  
24 look at it, that's what they are.

25 A. Mm-hmm (affirmative).

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1           **Q. What does it mean that, quote, "web**  
2   **content to debunk is in clearance"?**

3           A. Well, I think what we were referring to is  
4   posting a more specific kind of FAQ or myth. We had  
5   a myths page where we would more directly address  
6   the myth. You know, sometimes answers to things  
7   were buried in guidance or scientific papers, and we  
8   were trying to make it easier for people to  
9   understand the myths. So I think this is in  
10   reference to adding a myth or an FAQ to the site.

11           **Q. All right. And then you said -- well, my**  
12   **next question: So what does CDC do to debunk the**  
13   **claims that -- I'll make it more specific here.**  
14   **What did CDC do to debunk each of these claims?**  
15   **What process does it go through to debunk them?**

16           A. I can't -- I can't answer what the --  
17   because that's a scientific process that I'm not  
18   part of.

19           **Q. Okay. So they give these questions to**  
20   **you, and you send it out to a scientist or a subject**  
21   **matter expert, let's call them.**

22           A. Mm-hmm (affirmative).

23           **Q. I take it -- I take it from the responses**  
24   **there is a number of different CDC answers. One is**  
25   **inconclusive. You say that a number of times. They**



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1     **didn't have the information at that time, is that**  
2     **fair?**

3           A.   That's my assumption of what was meant by  
4     that.

5           Q.   Okay. And sometimes they'd say  
6     **inconclusive, but give here's what we know now?**

7           A.   Mm-hmm (affirmative).

8           Q.   And then in other times it's just  
9     **debunked.**

10           What did you get from the subject matter  
11   **experts when they send that back? Did they just**  
12   **send back "debunked," or do they have some reference**  
13   **or explanatory note?**

14           A.   On -- I think it varied. For this one I'm  
15   not sure. I don't remember if I saw all the  
16   explanations, or if they were discussed in meetings  
17   with the experts. I've seen some that seemed to  
18   have a little more description when I have asked it,  
19   but -- or well, maybe when I was asking the SME they  
20   might have given me, but I was really the one  
21   discussing it directly with the SME.

22           Q.   Now you've also described already some  
23   **things they'd already done and put on your website?**

24           A.   Yes.

25           Q.   All right. So do you know if CDC

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1 conducted any experiment or processes to debunk any  
2 of these items?

3 A. I wouldn't know.

4 Q. Do you know whether they did surveys of  
5 the medical literature of the vaccines?

6 MS. SNOW: Objection. Vague.

7 BY MR. VECCHIONE:

8 Q. In order to debunk claims do you know  
9 whether they checked medical literature, or what  
10 they reviewed?

11 A. I wasn't part of the scientific process,  
12 so I wouldn't even want to speculate.

13 Q. So I think if you look at Exhibit 15.

14 A. Yes.

15 Q. Do you have it? If you go to the  
16 second-to-last page it's where they start. And  
17 Payton Iheme sends you this list of a number of  
18 claims. And the date of that is May 19th; right?

19 A. Yes.

20 Q. And then if you look at 16 by June 3rd at  
21 2021, 2:57 you write about the last ones that you  
22 hadn't told her about: "Yes, they are debunked and  
23 we will also have content on it soon"; correct?

24 A. I see that, yes.

25 Q. All right. So that is about two weeks'

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1 time to debunk these claims that?

2 A. That seems like the dates, yes.

3 Q. So given that short time frame, would you  
4 agree with me that CDC didn't do any experiment to  
5 debunk these proposals?

6 MS. SNOW: Objection. Mischaracterizes  
7 the documents and the testimony.

8 A. I feel like it took us two weeks to  
9 respond back to Facebook. I don't think it was fair  
10 to characterize it as the time it took CDC to  
11 potentially collect science on this.

12 BY MR. VECCHIONE:

13 Q. Thank you. Do you know who -- when you  
14 give your initial proposals to Facebook, when --  
15 like the discussions we saw earlier where you said  
16 those were our discussions but we have to check with  
17 the subject matter experts, who in that  
18 conversation, when you're meeting with them, who  
19 makes those proposals? Is that you, or is that one  
20 of the co-chairs we mentioned?

21 MS. SNOW: Objection. Vague.

22 A. What do you mean by proposals?

23 BY MR. VECCHIONE:

24 Q. Well, they put together these matters to  
25 be debunked; right? And we saw -- and you can put

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1 15 next to 16. And if you look at 15, as we  
2 discussed earlier, Liz Lagone sends you: This is  
3 the conversation we had. It's kind of --

4 MR. GILLIGAN: Which page?

5 MR. VECCHIONE: Page -- on page 15 [sic],  
6 second page.

7 MR. GILLIGAN: Thank you.

8 MR. VECCHIONE: Exhibit 15.

9 BY MR. VECCHIONE:

10 Q. So she says, and we've discussed this  
11 before: "Please confirm the conclusions I have  
12 noted below based on our discussion."

13 So you had a discussion and she got these  
14 impressions. But who gave her these impressions?  
15 In other words, who was the person in the room who  
16 could say, nah, I don't think that's right, but  
17 we'll get back to you with the subject matter  
18 expert?

19 A. I don't remember this call specifically in  
20 any kind of detail, but I do believe it was one of  
21 the first times they had sent us a list, and I think  
22 that Cynthia and Rosie or Demi, who had a lot more  
23 knowledge of the content, piped in mostly on what  
24 they thought was available.

25 Q. Okay.

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1           A. But I believe we characterized it during  
2     the call that we would need the expert, and I  
3     followed up that way at the end.

4           **Q. In the subsequent emails?**

5           A. Yes.

6           **Q. And then -- so then finally there is at**  
7     **the end: "Yes, these are debunked" --**

8           A. Mm-hmm (affirmative).

9           **Q. -- and you'll "have content on it soon."**  
10           **And that content, is that talking points,**  
11     **or is that web content when you use that term?**

12           A. When I use what term?

13           **Q. Content.**

14           A. Web content, it could have been a FAQ on  
15     the web, it could have been a myth, it could have  
16     been a fact sheet on the web. Anything on the  
17     web --

18           **Q. All right.**

19           A. -- that was for consumers.

20           **Q. But you considered that debunked by the**  
21     **CDC by June 3rd, 2021?**

22           MS. SNOW: Objection. Vague.

23     BY MR. VECCHIONE:

24           **Q. Well, she says: "Yes, they are debunked**  
25     **and we will also have content on it soon" in**

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1 **Plaintiffs' Exhibit 16, June 3rd, 2021.**

2 A. We reported to Facebook that they were  
3 debunked at this time.

4 MR. VECCHIONE: Thank you. Exhibit 17.  
5 You know what, take this one, too, because it will  
6 be real quick, I hope.

7 BY MR. VECCHIONE:

8 Q. So I'll -- one more question on 16. On  
9 that June 3rd date where you said these are  
10 debunked, who makes the final calls that they are  
11 debunked before you send it Facebook?

12 A. The communicators or the SME that I'm  
13 working with would decide if it was okay to send it  
14 back to Facebook. The communicator would get that  
15 from the SME that they were working with.

16 For instance, my team posts the web, but I  
17 don't know how every piece is exactly cleared, but  
18 yet when they send it to us to post it there were  
19 trusted people that send it to me, and we assume  
20 that it's cleared and we post it.

21 It's very similar. Rosie was also in  
22 charge of clearing other things, and so she would  
23 assure to me that she had discussed it with the SMEs  
24 of authority.

25 Q. Okay. And do you know of any, the names

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1 of any of these SMEs?

2 A. No, not off the top of my head. I mean,  
3 people were in and out of the response, and I don't  
4 recall.

5 Q. All right. I'll ask you to take a look at  
6 Plaintiffs' Exhibit 16 again.

7 A. Okay.

8 Q. Can you read item seven, and the answer on  
9 -- it's Bates stamped 533. It's on the second page.

10 A. Of which exhibit?

11 Q. Exhibit 16.

12 A. Of 533.

13 Q. The bottom at the number is called a Bates  
14 stamp.

15 A. Oh, sorry.

16 Q. That page, if you go up -- yeah, not  
17 everybody knows that and I have to say that --

18 MR. GILLIGAN: Nobody actually uses a  
19 Bates stamp any more either.

20 MR. VECCHIONE: What do they do?

21 MR. GILLIGAN: They're all electronically  
22 applied.

23 MR. VECCHIONE: I gotcha. I remember.

24 BY MR. VECCHIONE:

25 Q. In any event, could you read item 7 from

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1 the email that you sent?

2 A. "People who are receiving COVID-19  
3 vaccines are subject to medical experiments."

4 Q. And then the answer at 7(a)?

5 A. "Debunked. CDC notes this likely stems  
6 from the vaccines only having EUA now and equating  
7 lack of full authorization as being involuntary part  
8 of a medical experiment."

9 Q. And WhatsApp EUA?

10 A. Emergency use authorization.

11 Q. All right. And that's when the FTC -- FDA  
12 has given an emergency use authorization for certain  
13 medicines?

14 A. This is not my area of expertise, but yes,  
15 I believe that's --

16 Q. That's your understanding?

17 A. Yes.

18 Q. So were you aware at this time that  
19 vaccine mandates had been employed by governments,  
20 employers and colleges as a condition of maintaining  
21 employment or enrollment?

22 MS. SNOW: Objection. Assumes facts not  
23 in evidence.

24 BY MR. VECCHIONE:

25 Q. Have you ever heard of such a thing?



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1 A. Yes. I don't know --

2 Q. Does getting a vaccine as a requirement of  
3 maintaining employment or enrollment affect  
4 voluntariness?

5 MS. SNOW: Objection. Calls for  
6 speculation, assumes facts not in evidence,  
7 argumentative.

8 A. This is really not my area of expertise of  
9 any account. I don't have anything really to  
10 provide on that.

11 BY MR. VECCHIONE:

12 Q. Did you instruct Facebook to do anything  
13 with debunked claims?

14 A. No.

15 Q. Did you have an understanding of what they  
16 were going to do with any claims that the CDC said  
17 were debunked?

18 A. I knew that they had options, but I think  
19 we also discussed on a previous exhibit, which is to  
20 inform people, to maybe reduce it in the algorithm,  
21 or to remove it. I -- they probably had other  
22 options, but I knew of at least those.

23 (Plaintiffs' Exhibit 17 presented.)

24 Q. Thank you. Exhibit 17. And, again, just  
25 tell me the subject line and the date.

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1           A. "FB misinformation claims help debunking,"  
2 misspelled. The date is 7/26/2021.

3           Q. So on July 26, 2021 it's Liz Langone to  
4 you again; right?

5           A. Yes.

6           Q. And she says: "Our Misinformation Policy  
7 Team," meaning Facebook's do you believe?

8           A. Yes.

9           Q. "Has identified some claims that we were  
10 hoping your team could help us understand if they  
11 are false and can lead to harm"; right?

12          A. Yes.

13          Q. And she has spike proteins in COVID-19  
14 vaccines, Guillain-Barre syndrome -- which I will  
15 use GBS from now on as well -- is possible side  
16 effect, and heart inflammation as a possible side  
17 effect of all COVID-19 vaccines.

18               Those were the questions that she sent  
19 you; right?

20          A. Yes.

21          Q. Do you know why she's asking you, or do  
22 you have an understanding? I'll withdraw it.

23               Do you have an understanding of why she's  
24 asking you at CDC whether the claims are true or  
25 false?

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1           A. Because CDC would have credible health  
2 information about the claims or scientific  
3 information that would benefit their policy making  
4 is the way I understood it.

5           Q. Okay. And she then asks you she was  
6 "wondering if your team was aware of any global  
7 source of truth/database for vaccine adverse effects  
8 including possibly vaccine-related deaths."

9           Do you see that?

10          A. Yes.

11          Q. Did there ever come a time when WHO or  
12 some foreign medical health agency differed with the  
13 CDC on any of these vaccine topics that you recall?

14          A. That's not my area of expertise, and I  
15 don't recall any specifics.

16          Q. Do you know whether on these three  
17 requests that you did another response on debunking,  
18 inconclusive, or not known like you did in the  
19 previous one, exhibits we looked at?

20          A. I don't remember what I specifically  
21 answered with this.

22          Q. Okay.

23          A. I know generally what I -- how I handled  
24 them, but not what I did with this.

25          Q. Okay. And generally how you handled them

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1 we've already discussed?

2 A. Yes.

3 Q. And you have nothing different to add on  
4 this particular request?

5 A. No.

6 (Plaintiffs' Exhibit 18 presented.)

7 Q. Okay. You can go to Exhibit 18. And once  
8 again could you please give me the subject line and  
9 the date of Exhibit 18?

10 A. Yes. CrowdTangle COVID-19 reports.  
11 7/20/21.

12 Q. Okay. And please take a look at it.

13 A. I've scanned this one.

14 Q. Who's -- at the top, at the very end, I  
15 guess I should say the end, the very top?

16 A. Mm-hmm (affirmative).

17 Q. It's Carol Crawford to Tyler Woods. Who  
18 is that?

19 A. Tyler Woods was a name on another exhibit.  
20 I mentioned at that time I'm pretty sure that Tyler  
21 Woods took over the reporting from Kelly Perron, and  
22 that appears to be the case here. There is a  
23 transfer on the first page saying -- from Kelly  
24 saying Tyler is going to be sending the reports in  
25 the future.

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1 Q. Okay. And once again these are the  
2 CrowdTangle reports that I think we discussed at one  
3 point you were receiving biweekly?

4 A. Yes.

5 Q. And were you doing anything different with  
6 this information at this time than you've described  
7 to me earlier?

8 A. Not that I recall.

9 Q. Okay. And at this time, June 9th, 2021,  
10 are they reporting this to you for the same reasons  
11 as you've described previously when we first  
12 mentioned CrowdTangle?

13 A. That's my recollection of it.

14 Q. On the very last page, which is the  
15 beginning of it, June 8th, 2021, 8:13 p.m.,  
16 "vaccination lawsuits" --

17 A. I see it.

18 Q. -- highlighted. Do you know what they are  
19 referring to there?

20 A. Sounds like the lawsuits around the  
21 mandates that you mentioned previously.

22 Q. Okay. Like the OSHA mandate or CMS  
23 mandates?

24 MS. SNOW: Objection. Assumes facts not  
25 in evidence. Calls for speculation.

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1 A. I really am speculating.

2 BY MR. VECCHIONE:

3 Q. You're not sure?

4 A. I don't know. This is not really an area  
5 of my expertise. This is simply a report of  
6 conversations that are occurring on social media.

7 Q. All right. When you received it, did you  
8 have an understanding of what the vaccine lawsuits  
9 they were referring to were?

10 A. I had a recollection of that from watching  
11 the news in my personal life.

12 Q. Okay. On that same page "Deciding to Get  
13 Vaccinated" she's highlighted.

14 Why does the CDC need to be updated on the  
15 statements of public physicians?

16 MS. SNOW: Objection. Mischaracterizes  
17 testimony and the document.

18 BY MR. VECCHIONE:

19 Q. Why were you updated on those statements?

20 A. Again, these are reports that characterize  
21 the overall conversation of social media. They are  
22 not -- I don't believe these were picked out  
23 specifically for CDC. I think these are a report of  
24 the trends of conversation on social media.

25 Q. And I'd like you to turn to the next page

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1 where Tyler Woods takes over and he sends a June  
2 22nd, 4:43 p.m. summary to you.

3 A. Okay.

4 Q. At the end of it it says: "Let us know if  
5 you have any questions or specific keywords/topics  
6 you'd like us to explore in the next report. As  
7 always, please do not share."

8 Did there come a time that you shared  
9 keywords or topics with Facebook that you wanted  
10 them to check in?

11 A. I don't recall doing it.

12 Q. All right. Turn to the first page of  
13 Exhibit 18. Once again, this is Tyler Woods to you?

14 A. Yes. Sorry.

15 Q. Thank you. The very, very mistake on my  
16 instructions at the beginning. You're to be  
17 commended, because it usually happens a lot more  
18 until now.

19 So the last, the last item that's  
20 highlighted: Door-to-door vaccines. Do you know  
21 whether he's referring to any public statements made  
22 on this topic by any plaintiff in this case,  
23 including Governor Mike Parson?

24 A. I wouldn't know.

25 MR. VECCHIONE: You can put that aside.

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1 (Plaintiffs' Exhibit 19 marked.)

2 BY MR. VECCHIONE:

3 Q. And once again please identify it to me by  
4 subject matter and date of Exhibit 19, and then  
5 please read it to yourself.

6 A. CrowdTangle COVID-19 reports, 8/18/21. I  
7 didn't hear your last part of to yourself, what.

8 Q. Just read it to yourself. In other words,  
9 you get to review the document but you don't have to  
10 read it out loud?

11 A. I'm sorry about that. Okay.

12 Q. I'm not caught up to you.

13 Okay. So as we've discussed, this, once  
14 again, is one of the CrowdTangle reports but that  
15 Tyler Woods is now sending; correct?

16 A. Yes.

17 Q. Let's go back to the August 3rd exchange  
18 on this. So on August 3rd Tyler Woods writes to you  
19 at 6:16 p.m.?

20 A. Yes.

21 Q. And once again the purpose of this you've  
22 already testified to; it hasn't changed, why you're  
23 getting these?

24 A. Correct.

25 Q. All right. So did the CDC at this time



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1 have proof that, quote, "the recent uptick in  
2 hospitalizations and deaths is being driven by  
3 unvaccinated individuals"?

4 A. I'm not an expert in that area and I  
5 wouldn't be able to answer that question.

6 Q. All right. Do you know whether subsequent  
7 evidence the CDC had supported that view?

8 A. I'm not an expert in this area, and I  
9 don't feel comfortable. I don't know.

10 Q. The email exchange that Tyler would send  
11 you on July 20th, 2021, the Bates stamp number at  
12 the bottom is 2440 of this document.

13 A. I see it.

14 Q. You there? So, once again, when he sends  
15 you material from CrowdTangle concerning allowing  
16 people to return to religious services, that's  
17 because it's appearing on CrowdTangle and not  
18 because you asked for it?

19 A. Correct.

20 Q. And let's go to the first page here, but  
21 I'll ask you to take a look at the August 17th  
22 exchange. Once again, Tyler Woods sending you the  
23 CrowdTangle reports?

24 A. Yes.

25 Q. Now, by August 17th, 2021 are you still

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1     **using CrowdTangle for the same purposes you**  
2     **discussed earlier?**

3             A. Yes. But this isn't about us using  
4     CrowdTangle. This is about them sending us  
5     CrowdTangle reports.

6             **Q. Okay.**

7             A. But either way it's all the same purpose.  
8     I just wanted to clarify that.

9             **Q. Okay. Because by now you may be using**  
10    **CrowdTangle in a different way. You might be**  
11    **getting the summaries and going in directly?**

12            A. Well, we had access to go in directly to  
13    CrowdTangle and run in reports I think from early  
14    2020.

15            **Q. Okay.**

16            A. And I mentioned that our research team, I  
17    think, searched in it and looked in it to create  
18    their reports, and I believe other teams did too. I  
19    did not personally. These are reports that were  
20    sent to us. So that's different than the way you  
21    stated it.

22            **Q. I see.**

23            A. I did not use these reports in any  
24    different way than I have been saying in previous.

25            **Q. But just to clarify.**

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1 A. Yes.

2 Q. So these are reports from Facebook to you?

3 A. Yes.

4 Q. As we've discussed?

5 A. Yes.

6 Q. I might ask you if something's changed,  
7 but you've already testified to that. But within  
8 CDC you had access to CrowdTangle, and created your  
9 own reports?

10 A. That we could -- I don't know that we  
11 created reports. I know that we did searches in  
12 CrowdTangle, the same way we do searches in other  
13 social media and listening tools that we have to  
14 create, to understand what's being discussed in the  
15 environment, to update our communication material,  
16 as I was explaining this morning.

17 Q. Okay. So on this particular one that  
18 we're discussing, once again Facebook has sent you  
19 their CrowdTangle summary. And I-- the COVID 19  
20 mandates at the bottom there that's highlighted. It  
21 says: "On the other hand, many conservative  
22 politicians are calling for an end to government  
23 mandated restrictions and vaccinations."

24 And my question is do you know whether or  
25 not there was any CrowdTangle information about

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1     **either Attorney General Schmitt or Attorney General**  
2     **Landry in these CrowdTangle briefings?**

3             A. I'm not -- I wouldn't even say I flipped  
4     open this -- every report. I don't know. I  
5     couldn't remember any of the details.

6             They did often put pictures of the posts,  
7     of a post as examples.

8             **Q. Oh, okay.**

9             A. But I don't know.

10            **Q. That they're finding? Sort of like that**  
11     **that attachment we saw earlier where they were**  
12     **asking you about the wording? Like, in other words,**  
13     **it wouldn't look like this. It would be some**  
14     **something they had taken off Facebook?**

15            A. Yeah. But that was -- those samples I  
16     feel like you're referencing are different. This  
17     would just be like they are saying a lot of people  
18     are talking about COVID-19 mandates; they might put  
19     a few example posts someone put in the slide deck to  
20     show what they were talking about.

21            **Q. Got it. Thank you.**

22            MR. VECCHIONE: Exhibit 20.

23            THE WITNESS: After Exhibit 20, could we  
24     take a short break?

25            MR. VECCHIONE: Let's take one now.

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1 THE WITNESS: Could we take one now?

2 THE VIDEOGRAPHER: Off record at 2:06.

3 (Recess 2:06 p.m. - 2:19 p.m.)

4 THE VIDEOGRAPHER: We are back on the  
5 record at 2:19.

6 (Plaintiffs' Exhibit 20 marked.)

7 BY MR. VECCHIONE:

8 Q. Okay. Ms. Crawford, have you had a chance  
9 to look at Plaintiffs' Exhibit 20?

10 A. I did.

11 Q. All right. And could you tell me the  
12 subject line and who's it from, who's it to and what  
13 the date is?

14 A. Yes. The subject is VAERS policy  
15 consultation on 8/19, 2021. The first email is from  
16 me to Carrie Adams at Facebook.

17 Q. All right. What's your understanding of  
18 why the CDC was asking to meet with the VAERS  
19 experts for consultation about misinformation?

20 A. I don't recall a lot of the details, but  
21 VAERS, the topic of VAERS was an area that was  
22 widely discussed on social media, and there was a  
23 lot of areas of confusion about what VAERS data was.  
24 There was myths about VAERS data, and there was  
25 misinformation about VAERS data. So it was always

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1 one of the things that rose to the top in terms of  
2 volume of discussion of people were very confused  
3 about VAERS.

4 **Q. And do you know whether this meeting ever**  
5 **took place?**

6 A. I don't remember if the one we were  
7 discussing at this time took place and the Singapore  
8 team attended for sure. But we did have a session  
9 with the VAERS experts with Facebook.

10 **Q. Okay.**

11 A. Probably as a result of this, I feel like  
12 it might have dragged out a little bit after this  
13 for a few weeks.

14 **Q. And do you know what was discussed at that**  
15 **meeting? First, did you attend it?**

16 A. I did attend it.

17 **Q. And do you recall what was discussed at**  
18 **that meeting?**

19 A. We had one of the experts for VAERS,  
20 and -- maybe it was two experts for VAERS and a  
21 couple of their communication experts on the line  
22 with Facebook's team. I believe it was like their  
23 misinformation and policy type team like that Liz  
24 was part of, but I don't know who -- I don't  
25 remember specifically who was on there. And we

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1 offered the SME just to answer their questions about  
2 what VAERS was and what it wasn't.

3 And my recollection is they asked a lot of  
4 questions like, you know, what does -- what does --  
5 who can report something on VAERS and things like  
6 that during the session.

7 **Q. Okay. Do you know who the subject matter**  
8 **experts on VAERS were at CDC?**

9 A. Goodness. I'm just totally blanking on  
10 their names. I'm sorry.

11 **Q. If you recall during the course of this**  
12 **deposition, please let me know.**

13 A. Okay.

14 MR. VECCHIONE: We can move on to the next  
15 document.

16 (Plaintiffs' Exhibit 21 marked.)

17 A. Thank you.

18 BY MR. VECCHIONE:

19 **Q. And once again if you could just read the**  
20 **subject line, and then who -- what the date was and**  
21 **then read it to yourself.**

22 MS. SNOW: Is this for Exhibit 21?

23 MR. VECCHIONE: 21.

24 A. Subject BOLO, CDC lab alert and  
25 misinformation. September 1st. It's from me to

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1 Carrie Adams at Facebook.

2 I have read it.

3 BY MR. VECCHIONE:

4 Q. Okay. So do you recall this email?

5 A. I do now that I'm seeing it, yes.

6 Q. What are you telling Adams in this email?

7 A. I can't see the attachment. But there was  
8 a misinterpretation of a lab alert that we issued,  
9 and so I think we put together a deck -- a power  
10 point or a two-page just saying what the facts were  
11 about this lab alert.

12 Q. Okay. What is a lab alert?

13 A. I don't know if this was a HAN alert or if  
14 was some other kind of alert they sent straight to  
15 laboratory. So I don't remember the details.

16 Q. What is a HAN alert?

17 A. A health advisory alert. We send it --  
18 no, Network. Health Advisory Network alert. Sorry.

19 Q. And you have: "Carrie - BOLO."

20 What's BOLO?

21 A. Be on the lookout.

22 Q. Why were you concerned about this?

23 A. Similar to all the other BOLOs, we still  
24 thought it was good to point out if we had facts  
25 around something that was widely circulating as a



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1 cause of misinformation to the platforms to assist  
2 them in whatever they were going to do with their  
3 policy or not do. And this was one that was kind of  
4 growing, and we had a lot of facts about it, and the  
5 team was concerned about this, this  
6 misunderstanding.

7 **Q. Do you recall whether Facebook did**  
8 **anything upon receiving this information from you?**

9 A. I don't recall.

10 **Q. How did you know that it was a small but**  
11 **growing area of misinformation?**

12 A. I vaguely recall that we ran some  
13 Meltwater reports, and that people -- that  
14 conversation regarding this topic -- Meltwater is  
15 sort of like CrowdTangle but for all the  
16 platforms -- and that the conversation around this  
17 was growing.

18 **Q. Got it. Now, tell me about Meltwater.**  
19 **Does it aggregate all the platforms and you search**  
20 **across them?**

21 A. Yes. And social media listening tools are  
22 used by every social media team, I believe. I mean,  
23 it's widely common practice, and, yes, it will  
24 search. The CrowdTangle can see more on the Meta  
25 properties. So it's nicer if you're just looking at

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1 Meta properties. Meltwater gives you social media  
2 at large. The Meta platforms, to clarify.

3 Q. Do you know what the nature of the  
4 misinterpretation was? I know we don't have the  
5 attachment, but do you know?

6 A. I don't recall any longer.

7 (Plaintiffs' Exhibit 22 marked.)

8 BY MR. VECCHIONE:

9 Q. Go to Exhibit 22. So what -- before we  
10 look at that exhibit --

11 A. Mm-hmm (affirmative).

12 Q. -- when you said "be on the lookout," what  
13 did you expect them to do once they were on the  
14 lookout for Facebook?

15 A. The same thing I have been describing. I  
16 knew that they had various options. They could have  
17 just used it to inform people. They could have  
18 considered it in their algorithm, I believe. I did  
19 understand that potentially removing posts was  
20 something that they might do.

21 Q. So if you could, just please identify  
22 Exhibit 22 to me the same way by its re: line --

23 A. Okay.

24 Q. -- and its date and then read it to  
25 yourself.

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1           A. November 2nd, 2021. Subject New Claims  
2 and Policy Updates Following EUA Authorization for 5  
3 to 11-year-olds.

4           It's from me to a group, but I think  
5 primarily it was to Facebook. Also -- never mind.  
6 I thought I missed part of the subject. Sorry.  
7 Okay.

8           **Q. All right. So this is the first one**  
9 **that -- she actually signs off with Meta this time;**  
10 **right? So I guess whatever he did took place --**

11          A. I see that.

12          **Q. -- changed over by then.**

13               All right. The -- can you read the first  
14 two paragraphs she writes to you on November 2nd,  
15 1:22 p.m. into the record?

16          A. Yes. "Kristen, thanks so much for  
17 confirming the ability for the claims in question  
18 last week having the risk of causing vaccine  
19 refusals. And thank you all so much for your input  
20 over the last week on our many questions about  
21 vaccine misinformation relative to the EUA."

22          **Q. And second paragraph?**

23          A. (As read) I wanted to share that as a  
24 result of our work together, when the FDA give  
25 emergency use authorization to the Pfizer vaccine

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1 for children last week, we immediately updated our  
2 policies globally to remove false claims about the  
3 COVID-19 vaccine for children, e.g., the COVID  
4 vaccine is not safe for kids, we also launched a new  
5 feature on Instagram where accounts that repeatedly  
6 post content that violates our policies on COVID-19  
7 or vaccine misinformation may now lose the ability  
8 to be tagged or mentioned or may see pop-ups asking  
9 if they'd like to delete certain posts that violate  
10 our policies.

11 Q. And then she goes on to say: Now we've  
12 identified new claims; right? And then she lists  
13 them?

14 A. Yes.

15 Q. And she asks you could you tell her  
16 whether the claim is false, and if believed this  
17 claim could contribute to vaccine refusals; right?

18 A. Yes.

19 Q. All right. And this is similar to the  
20 other lists she had sent you earlier that we looked  
21 at to be debunked or not?

22 A. This is similar. This time, though,  
23 they -- I think -- I don't know if this is the first  
24 time, but this added the whole "could this  
25 contribute to vaccine refusals" element that I don't

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1 think we had on the last one.

2 Q. Okay. What was your understanding of why  
3 she was reporting to you Meta's policies on  
4 childhood vaccines?

5 MS. SNOW: Objection. Mischaracterizes  
6 the document.

7 BY MR. VECCHIONE:

8 Q. You can answer.

9 A. Would you reask the question?

10 Q. Yeah. What was your understanding of why  
11 she was telling you what Meta's policy was on  
12 pediatric vaccines?

13 A. Well, I don't know what -- why she was  
14 doing it specifically because I can't speculate on  
15 that, but I received it as a thank you for assisting  
16 with the claims or the facts about this that we  
17 could provide.

18 Q. And then why did you think she was asking  
19 you to tell her which claims were true and which  
20 were false on that further list?

21 MS. SNOW: Objection.

22 A. Sorry?

23 MS. SNOW: Mischaracterizes the document.

24 BY MR. VECCHIONE:

25 Q. Okay. You can answer.

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1 A. Ask the question again.

2 Q. Yeah. What was your understanding of what  
3 Langone was asking -- why she was asking you to tell  
4 her which of these claims were true and which were  
5 false, and, as you said, which would lead to vaccine  
6 hesitancy?

7 A. It was still my interpretation that she  
8 was asking to inform their policies. They were  
9 looking for CDC, who would have the scientific  
10 facts, to provide them with scientific facts.

11 Q. And didn't this email give you a pretty  
12 good idea that when CDC said something was false  
13 that Meta was going to take it down?

14 MS. SNOW: Objection. Calls for  
15 speculation.

16 BY MR. VECCHIONE:

17 Q. You can answer.

18 A. I did not have a recollection of this  
19 email, and -- when I think about the work we did,  
20 but it definitely says here that they updated the  
21 policy globally to remove additional false claims.

22 Q. All right. Upon getting your information;  
23 correct?

24 A. It doesn't say upon getting our  
25 information. It just says that when the FDA gave

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1 the emergency use authorization we immediately  
2 updated our policies. It doesn't say upon getting  
3 our information.

4 **Q. She goes on to say: I wanted to share**  
5 **that as a result of our work together; right?**

6 A. Yes. But I assume this was -- I mean, I  
7 don't -- I'm reading it now. I don't have memory of  
8 this email. I'm interpreting it more of like the  
9 ongoing work for us to provide the facts to them.  
10 It could have been something specific, but I don't  
11 remember something specific regarding the -- this.

12 **Q. Do you know whether -- and then you say --**  
13 **hang on. I'll get back to it.**

14 You then respond to her on 11/2. I think  
15 it's 2:54:26. It's down to the second. "Got it,  
16 Liz. I'm going to work on this one with some other  
17 vaccine staff and take this one off of Kristen."

18 **So who are the other vaccine staff?**

19 A. Kristen Nordlund is a press officer for  
20 the National Center -- or at the time was a press  
21 officer for the National Center for Immunization,  
22 Respiratory Diseases where the vaccine work was, and  
23 she was very involved in the COVID response.

24 And I don't see it in this chain, and I  
25 cannot be sure, but what I think happened was that

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1 Kristen helped on some questions regarding this in a  
2 previous set of emails or maybe a conversation.

3 Q. All right. And then you say: "I hope we  
4 can do it by Monday."

5 So it's going to take a little less than a  
6 week. But you're going to hope to get back to her  
7 by then. This is a Tuesday.

8 A. Yes. I see that, yes.

9 Q. But then you say: "Thank you so much for  
10 the feedback on what you've been able to do. This  
11 is very good to know." Right?

12 A. I do say that, yes.

13 Q. So you're approving of her taking down the  
14 COVID vaccine is not safe for kids off the Meta  
15 platforms; right?

16 MS. SNOW: Objection. Mischaracterizes  
17 document and testimony.

18 BY MR. VECCHIONE:

19 Q. You can answer.

20 A. I did not mean it generally. I never felt  
21 that my role, or CDC's role, was to determine what  
22 to do with the scientific information that we  
23 provided. But I'm happy that providing the  
24 scientific information led to less spread of  
25 misinformation. In this email I think what's what I



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1 was reflecting.

2 Q. So you were pleased that people who  
3 believed that the COVID vaccine was not safe for  
4 kids were taken off the platforms of Meta?

5 MS. SNOW: Objection. Mischaracterizes  
6 testimony.

7 A. I don't think that's what she's saying in  
8 here.

9 BY MR. VECCHIONE:

10 Q. (As read) We immediately updated our  
11 policies globally to remove additional false claims  
12 about COVID vaccine for children, e.g. the COVID  
13 vaccine is not safe for kids.

14 That doesn't tell you that she's removing  
15 those people from the platform?

16 MS. SNOW: Objection. Mischaracterizes  
17 document.

18 A. No.

19 BY MR. VECCHIONE:

20 Q. What is she doing then?

21 A. I understand that she's removing claims  
22 that have -- that are not scientifically accurate.

23 Q. Okay. Well, let me put it another way.  
24 People who post that statement will have that  
25 statement removed from Meta; correct?

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1 MS. SNOW: Objection. It calls for  
2 speculation, mischaracterizes the document.

3 BY MR. VECCHIONE:

4 Q. That was your understanding of this email;  
5 right?

6 A. I think we'd have to just look at what's  
7 written here.

8 Q. And it is in English; right?

9 MS. SNOW: Objection.

10 MR. GILLIGAN: Argumentative.

11 A. I don't think you're characterizing it  
12 correctly. Sorry.

13 (Plaintiffs' Exhibit 23 marked.)

14 BY MR. VECCHIONE:

15 Q. Move on to Exhibit 23. And once again I'd  
16 like you to just read the subject line and the date,  
17 and then read the rest to yourself.

18 A. New claims and policy updates following  
19 EAU authorization for 5 to 11-year olds.

20 This is on November 8th, 2021 from me to  
21 Liz and some others at CDC.

22 Okay.

23 Q. All right. So once again in Exhibit 23  
24 she's asking you a number of questions, particularly  
25 number one was COVID-19 vaccines weaken the immune

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1 system. And then the same question she's asked  
2 before: "Is this false? Could this lead to vaccine  
3 refusals?" Right?

4 A. Yes.

5 Q. And you've -- and you've responded,  
6 "false"; right? "COVID vaccination will help people  
7 from getting COVID-19. Adults and children may have  
8 some side effects from vaccine which is normal signs  
9 that their body is building protection. These side  
10 effects may affect their ability to do daily  
11 activities but they should go away in a few days.  
12 Some people have no side effects, and allergic  
13 reactions are rare. Learn how mRNA vaccines work."  
14 Right? That's your response to her?

15 A. That I received from the content teams,  
16 yes.

17 (Plaintiffs' Exhibit 24 marked.)

18 BY MR. VECCHIONE:

19 Q. Okay. I'm going to give you Exhibit 24.  
20 I'll just represent to you this is a report about  
21 European's Medicines Agency.

22 Do you know whether or not CDC looked to  
23 other worldwide agencies' view of the vaccines in  
24 order to inform Facebook on what was true and false?

25 A. That's completely out of my expertise or

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1 knowledge.

2 Q. Have you seen this document before?

3 A. No.

4 Q. And you don't know whether it was used to  
5 formulate any response you gave to Ms. Lagone?

6 A. No.

7 MS. SNOW: Objection. Asked and answered.

8 BY MR. VECCHIONE:

9 Q. That's fine. You said no.

10 A. (Nods head.)

11 Q. And then let's look at -- I think I tossed  
12 my document aside. Yeah.

13 I'll direct you to item number six that  
14 you responded to Lagone about breast milk from  
15 vaccinated parents, harmful to babies and children.

16 MR. GILLIGAN: What document you referring  
17 to again, John?

18 MR. VECCHIONE: It's number 23. It's  
19 number six of the Lagone proposals.

20 MR. GILLIGAN: Thank you.

21 MR. VECCHIONE: You know what, I'm going  
22 to let that -- we're going to move on.

23 MR. GILLIGAN: Okay. No objection.

24 BY MR. VECCHIONE:

25 Q. All right. We're going to Exhibit 26.

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1 We're going to skip Exhibit 25.

2 (Plaintiffs' Exhibit 26 marked.)

3 BY MR. VECCHIONE:

4 Q. And once again I ask you to tell me what  
5 the subject line is, and the date, and then read it  
6 to yourself of Exhibit 26.

7 A. Vaccine misinformation questions for CDC.  
8 February 3rd, 2022.

9 I have read it. I didn't read all the  
10 questions.

11 Q. I got. I'll direct you too. So this is a  
12 long email, so let's go by it in pieces.

13 A. Mm-hmm (affirmative).

14 Q. If you see Liz Lagone writes to you on  
15 February 3rd, 2022 4:36; right?

16 A. Yes.

17 Q. The very front page. She says: Hi,  
18 Carol. And could you please read her paragraph  
19 there?

20 A. (As read) I hope your team are well and  
21 staying healthy. Thank you so much for the  
22 information you provided on claims we asked about  
23 last month. Since we last spoke, I wanted to share  
24 updates we made as a result of our work together. I  
25 also wanted to ask for your assessment of a few

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1 things, including three additional claims we've  
2 become aware of from our regular monitoring; how FDA  
3 EUA authorization for children under five might  
4 impact our policies; and three, CDC's insights  
5 regarding deaths from vaccines. As always, please  
6 do let me know if it's easier to set up a time to  
7 talk. Otherwise could we get input before  
8 February 9.

9 Q. Okay. Time to talk through any of these  
10 live; right?

11 A. Excuse me?

12 Q. I think you just --

13 A. Oh, did I miss a sentence?

14 Q. I think you just skipped.

15 A. Sorry. "Set up a time to talk through any  
16 of these live." I apologize.

17 Q. So what was your understanding of what she  
18 meant by as a result of our work together?

19 A. I believe the result of the work together  
20 is us providing the scientific information for the  
21 questions that they were asking us periodically like  
22 these in this email.

23 Q. All right. And if you'd look -- I'd ask  
24 you to go to the back of the document, the very  
25 back. And the first at three, she says: "COVID-19

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1 vaccines have caused thousands/millions of deaths."

2 And she says: (As read) Under our current  
3 policy, we remove posts that claim that COVID-19  
4 vaccines kill people or lead to death. We removed  
5 these posts on the grounds that the claim is false  
6 and that it's harmful because people believe it, it  
7 might make them less likely to get vaccinated;  
8 right?

9 A. Yes.

10 Q. And then she notes that: In fact,  
11 vaccines -- some people might have an adverse  
12 reaction that leads to death; right?

13 MS. SNOW: Objection. Mischaracterizes  
14 the document.

15 A. I also can't --

16 BY MR. VECCHIONE:

17 Q. Okay.

18 A. I'm not a scientist.

19 Q. I understand that. But she's telling you  
20 her understanding. Putting millions and thousands  
21 of deaths aside, we have this -- she's bringing to  
22 you a problem now.

23 A. Okay. If you'd -- I lost where you're  
24 reading from.

25 Q. Okay. So on the last page she says: We

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1 understand that in general COVID-19 vaccines do not  
2 cause death. However, we are aware that some deaths  
3 have been linked to COVID-19 vaccination such as  
4 detailed in this correspondence in The Lancet...  
5 reporting death rates from TTS following AstraZeneca  
6 vaccination in a number of countries.

7 And then she's saying we're going to  
8 reconsider our policies, and she's asking you for  
9 your advice; correct?

10 A. She's asking us for scientific  
11 information.

12 Q. I'll ask you to go to the second page of  
13 this document, which is Bates stamped 1684 at the  
14 bottom. And in the middle of the page under number  
15 2 of the Claims about COVID vaccines for children  
16 under five years of age.

17 And she says: We understand the FDA is  
18 considering giving emergency use authorization for  
19 COVID-19 vaccine for children under five in coming  
20 weeks. We are considering how our existing policy  
21 on COVID-19 vaccines (see below) should apply to  
22 claims about children 6 months to 4 years once the  
23 vaccine is approved for use. Can you please assess  
24 for each claim whether it is false for children in  
25 this age range and if believed, likely to contribute



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1 to vaccine hesitancy or refusal?

2 And then: Please let us know if it's  
3 easiest to set up a time to meet and discuss each  
4 one.

5 And then she tells you what their policies  
6 are; correct?

7 A. No. I don't -- I haven't interpreted any  
8 of this as being the policies. These are the  
9 claims.

10 Q. Okay.

11 A. These are the things or -- they're saying  
12 are these true or false or unknown.

13 Q. Well, at the first one we read, though,  
14 they -- she did tell you under our current policy,  
15 remove posts that claim COVID-19 vaccines kill  
16 people or lead to death; right?

17 A. But the policy is not the same as the  
18 claims. The claims are the -- what she's asking us  
19 about, which is I know that they're using our  
20 scientific information to determine their policy,  
21 but they're asking us about the science.

22 Q. Okay. And your response was: "PS - the  
23 update is very helpful. Thank you for including  
24 that." Right?

25 A. Yes.

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1 Q. But and in this you don't respond on  
2 whether anything's debunked or not?

3 A. Yes. I don't remember if we did or not.

4 Q. And what did you find helpful about this?

5 A. I think what I think is helpful for us is  
6 to have her ask us specifically what she needs input  
7 on. So it's been helpful when she started just  
8 sending us the things she's wanting us to do.

9 I also think it is helpful to know that  
10 they're actually using the responses that we have in  
11 some form or fashion because it takes time to put  
12 them together.

13 Q. Thank you. You can put that aside.

14 A. Okay.

15 (Plaintiffs' Exhibit 27 marked.)

16 BY MR. VECCHIONE:

17 Q. And just again tell me the subject matter,  
18 the date, and then read it to yourself.

19 A. Okay.

20 MS. SNOW: What exhibit is it?

21 MR. VECCHIONE: Exhibit 27.

22 A. Have five minutes to chat. E: Vaccine  
23 Misinformation questions for CDC February 4th, 2022.

24 Okay.

25 (Reporter clarifying exhibit number.)

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1 BY MR. VECCHIONE:

2 Q. All right. And I think this is the same,  
3 at least part of the email is the same, as the last  
4 one we looked at; right?

5 A. I agree.

6 Q. But there is a different chain on top of  
7 hers saying she -- the part where she says she hopes  
8 you and your team are well and staying healthy.

9 A. Can I see 26?

10 Q. When you say on February 3rd at 5:21:  
11 I'll talk to the vaccine program and see what I can  
12 do -- or what we can do. Excuse me. You say: I  
13 will talk to the vaccine program and see what we can  
14 do; right?

15 A. Yes.

16 Q. Is that to have a meeting on these  
17 questions that she'd presented?

18 A. Well, I mean, I guess it could have been a  
19 meeting, but I was -- I was meeting -- I'll see if  
20 they could -- it was a lot of claims she gave in  
21 this email.

22 Q. Right.

23 A. And I was thinking I don't know that we're  
24 going to be able to address all of these. So I  
25 think I was thinking I would talk to them and see if

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1 would even be willing to look at this many of them  
2 because she's asking for input on them within a  
3 couple of days.

4 Q. And it would be difficult to give input on  
5 all those questions that quickly?

6 A. I thought so.

7 Q. And do you know if this phone call  
8 occurred that you say at the very top of it in  
9 Exhibit 27?

10 A. I don't know for sure. I think that she  
11 called, and I just said, look, I don't think that  
12 we're going to be able to -- I was going out of  
13 town. I do remember that much. I think I -- I  
14 think she may have called, or I had emailed her  
15 separately when we didn't catch up, and said I don't  
16 think we're going to have it this quickly, it  
17 probably will be when I return.

18 MR. VECCHIONE: Aren't you glad you came?

19 MR. KUMAR: Make myself useful, yeah.

20 (Plaintiffs' Exhibit 28 marked.)

21 BY MR. VECCHIONE:

22 Q. And once again I'd ask you to read, for  
23 Exhibit 28 read the subject line and the date and  
24 read it to yourself.

25 A. Okay. COVID Misinfo Project. 3/23/2021.

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1 Okay.

2 Q. Okay. We have a new cast of characters.

3 I'd like you to take a look at the bottom here, the  
4 March 18, 2021 portion of the email chain.

5 A. Yes.

6 Q. And that's from you to Stanley Onyimba at  
7 a Google -- it's [REDACTED]@google.com and Jan  
8 Antonaros at -- [REDACTED]@google.com.

9 Do you recognize those names?

10 A. Yes. And Stanley was the name I couldn't  
11 remember when you asked me who my POCs were at  
12 Google.

13 Q. Okay. Stanley.

14 So you wrote to them on March 18 -- well,  
15 read that out loud to me what you wrote to them:  
16 "Stanley/Jan"?

17 A. (As read) As I believe we discussed  
18 previously, CDC is now working with Census to  
19 leverage some of their infrastructure to help  
20 identify and address COVID vaccine misinfo. As I  
21 understand it from the Census team, when they were  
22 doing this for the Census project last year, they  
23 met regularly with a Google/YouTube Trust team. Is  
24 it possible for us to start regular meetings on this  
25 topic or maybe use our existing time? Let us know

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1 if you want to discuss in more depth.

2 Q. All right. So what did you mean by CDC is  
3 now working with Census to leverage some of their  
4 infrastructure to help identify and address COVID  
5 vaccine misinfo?

6 A. That was the work of the IAA with Census  
7 to help consult and work with us on the COVID  
8 misinformation information. I just -- put COVID  
9 information one time. That's what I'm referring to  
10 here. This is more specific. This is when I refer  
11 to infrastructure, I was referring to the fact that  
12 Christopher ran those reports and looked for  
13 misinformation on these areas for us.

14 Q. All right. And you refer to the Census  
15 project last year in which they met -- meet  
16 regularly with Google YouTube Trust team.

17 Was that a different project?

18 A. That was their -- I believe this was the  
19 2020 Census.

20 Q. And that's what you think you're referring  
21 to there?

22 A. Yes.

23 Q. Do you know whether or not the Census  
24 engaged in content moderation with Google?

25 A. I don't know.

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1 MS. SNOW: Objection. Vague.

2 BY MR. VECCHIONE:

3 Q. So and here I am not using censorship --  
4 anyways, still drawing objections.

5 All right. Let's take a look at  
6 March 23rd, 2021. Jan Antonaros to you, and cc's  
7 Stanley Onyimba. Can you read that response out  
8 loud?

9 A. Yes. But before I do, I want to go back  
10 to the clarification that she objected. When you  
11 asked me did Census do content moderation, I assumed  
12 you meant for the Census project, and I answered for  
13 that.

14 Q. Okay. How about for --

15 A. I wondered if there was more vagueness  
16 to --

17 Q. And how about for the COVID-19 vaccine  
18 project?

19 A. Not to my knowledge either.

20 Q. Okay.

21 A. But I thought you were referring to their  
22 project.

23 Q. All right. So please read Mr. Antonaros'  
24 response to you.

25 A. Hey, Carol -- or "Hi, Carol, Thank you for

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1 your patience as we identified the right colleagues  
2 from Google to pull into this effort. Would it be  
3 possible to schedule a call for later this week to  
4 learn more about how the CDC and Census envision  
5 working together on this important topic."

6 Q. What was your understanding of what  
7 Antonaros meant by the right colleague from Google  
8 to pull into this effort?

9 A. I believe she was going to ask people on  
10 their trust team, or whatever their name for their,  
11 that kind of team is.

12 Q. Okay. Did you -- do you know now or did  
13 you know then who these people were and what their  
14 titles were, or are?

15 A. No. I mean, I might have known then.  
16 They may have participated in the meeting.

17 Q. But you can't remember now?

18 A. But I don't know their names now.

19 Q. And what's your response to him?

20 A. "Sounds good to check in first -- would  
21 Friday around 3:30 work?"

22 Q. All right. And do you know whether or not  
23 you had that call with him?

24 A. I don't remember.

25 Q. All right. So you don't recall who was on



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1     **the call besides you, if it took place?**

2                   MS. SNOW:  Objection.  Mischaracterizes  
3     testimony.

4                   A.  I --

5                   MS. SNOW:  Sorry.

6                   (Inaudible crosstalk.)

7                   MR. VECCHIONE:  I'll rephrase.

8     BY MR. VECCHIONE:

9                   **Q.  You don't recall whether the call happened**  
10     **and who was on it?**

11                  A.  Correct.

12                  **Q.  All right.  And do you know whether you'd**  
13     **have a calendar with that call on it, by any chance?**

14                  A.  If we had a call, we typically had a  
15     calendar appointment.

16                  **Q.  Okay.  All right.  And what was -- you say**  
17     **"sounds good to check in first."**

18                         What did you want to check in with him  
19     **for?  What were you -- what did you want to talk**  
20     **about first?**

21                  A.  I mean, I'm doing this from reading the  
22     email.  I think she's saying let's check in before  
23     our regular meeting.

24                  **Q.  Okay.**

25                  A.  I think that's what -- I mean, that's how

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1 I interpreted the "check in first."

2 Q. And by this time were you already having  
3 regular meetings with Google like we've seen with  
4 Facebook?

5 A. Yeah. This was in 2021. So we had been  
6 meeting pretty regularly with Google by this time.

7 MR. VECCHIONE: Okay. You can put that  
8 aside.

9 (Plaintiffs' Exhibit 29 marked.)

10 BY MR. VECCHIONE:

11 Q. Let's try Exhibit 29. Same thing, read me  
12 the subject line, the date, and then take a look at  
13 it.

14 A. Okay. Okay. Subject line's: Followup on  
15 misinformation, or misinfo conversation. It's  
16 4/5/2021.

17 THE WITNESS: Can I see this?

18 MS. SNOW: Yes.

19 A. Okay.

20 BY MR. VECCHIONE:

21 Q. All right. So can you go to the very end,  
22 I guess, the very last page, read what you said on  
23 March 29 at 9:52.

24 A. "Are you all open to using our regular 4pm  
25 meetings to go over things with Census, or what is

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1 preferred? I wasn't clear how interested you all  
2 were on this effort or who the players are on your  
3 end."

4 **Q. So what were the regular 4:00 p.m.**  
5 **meetings you refer to?**

6 A. I think -- because I still have a  
7 4:00 p.m. meeting every other Monday with Google. I  
8 think that these were the same every-other-week  
9 check-in meetings. Sometimes we wouldn't have them.  
10 Sometimes we would have them and discuss things.

11 **Q. Did you have similar regular meetings with**  
12 **the other platforms we've been discussing, Face- --**  
13 **Meta and Twitter?**

14 A. We -- you asked some of this earlier.

15 **Q. I did.**

16 A. The same answer. So we had regular  
17 meetings with Google, and we had regular meetings  
18 with Meta. Most -- you know, the frequency changed.  
19 So, you know, I don't meet as often. I mean, Google  
20 we meet every other week. Right now with Meta it's  
21 more ad hoc.

22 **Q. Okay.**

23 A. We had had a regular meeting with  
24 Pinterest for a short period of time, and we had my  
25 memory was just more ad hoc meetings on occasion

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1 with Twitter.

2 Q. So on the regular meetings with either  
3 Google or Facebook?

4 A. Mm-hmm (affirmative).

5 Q. Well, let me ask the question this way.  
6 From the CDC end, were the same people usually  
7 attending those meetings with each social media?

8 A. It could vary. I mean, I was always -- I  
9 mean, with Google, it was typically me and Fred  
10 Smith, who's our technical lead, because often the  
11 Google questions would be more about technical  
12 implementations that we might have to work on. We  
13 were usually always on it. Sometimes I would --  
14 depending on the subject, I would bring in other  
15 people.

16 With Meta, I was pretty much always on  
17 there. Jay typically listened in. And then I would  
18 bring people in depending on the subject.

19 Q. All right. And what were the -- were the  
20 topics typically misinformation, or technical  
21 subjects?

22 A. They -- by and large, they were mostly  
23 about things other than misinformation; though  
24 misinformation was discussed in the meetings. But  
25 they were originated about getting our credible

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1 information out to our audiences and some of the  
2 examples I gave this morning.

3 Q. Okay. And what did you mean by with we're  
4 going to check with -- "to go over things with  
5 Census, or what is preferred"? What does that mean?

6 A. I don't -- I don't have direct memory of  
7 it. I'm only assuming that -- what I recall doing  
8 is asking through this chain is like is it okay if  
9 we bring Census in? Do you like -- what format is  
10 best to talk about misinformation?

11 Maybe we didn't resolve it on this call  
12 from the previous exhibit. I can't say for sure  
13 what I meant by it.

14 Q. Okay. And then could you read Onyimba's  
15 response to you on that, following that on  
16 March 29th?

17 A. (As read) We would like to follow up on  
18 our discussion with your colleague, Cynthia, on  
19 vaccine information a few months ago. Specifically,  
20 we plan to share a new list of common vaccine  
21 misinformation claims and would love it if Cynthia  
22 or other vaccine experts can join. We can also save  
23 a few minutes for me, you and Jan to discuss  
24 potential next steps regarding Census, but will not  
25 need the broader team for that discussion.

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1           **Q. So who's Cynthia?**

2           A. Cynthia Jorgensen, which was on a previous  
3       exhibit. She was the -- I mean, at the time of the  
4       other exhibits, she was the co-lead and the  
5       associate director for communication. I don't know  
6       what role she was -- she was definitely the ACS  
7       during this. I don't know if he was in their JIC  
8       during this period of time.

9           **Q. Do you know what vaccine information she**  
10       **provided to Google?**

11          A. I don't recall specifically. But they --  
12       so they were trying to be sure that they had the  
13       right information when someone Googled something.  
14       When you Google COVID, for instance, there are these  
15       little tabs that come up. They'll say, like,  
16       symptoms, treatment, vaccines. And that content,  
17       some of the things came from the CDC website. So  
18       from time to time they wanted to update information  
19       like that, and would ask us to have an expert on  
20       that could talk about it.

21          **Q. Got it.**

22          A. I don't remember this question, but I'm  
23       sure that's what it's in reference to.

24          **Q. All right. Do you know what Google did**  
25       **with the list of common vaccine misinformation**

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1     **claims?**

2             A. I don't remember the list of claims, or  
3     what the format was or what they asked us about it.  
4     Maybe if you have future exhibits I'll remember, but  
5     I don't recall from this.

6             Q. All right. And then he says and -- "can  
7     save a few minutes for you, me and Jan to discuss  
8     potential next steps regarding the Census but will  
9     not need the broader team for the discussion."

10            Is that your understanding that it's a  
11   discussion about Census, or with Census, like are  
12   they there?

13            A. I don't know for sure what this was in  
14   reference to. But it -- I think that it is in  
15   reference to discussing how to engage on an ongoing  
16   basis about misinformation and the Census suggestion  
17   that we have regular meetings with them just on that  
18   topic.

19            Q. I got it. And you respond that you're  
20   going to get those subject matter experts on the  
21   next call?

22            A. Yes.

23            Q. I think I might as well add, and Census  
24   won't be there, but you'll discuss how to engage  
25   with them. Is that the meaning of that, that they

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1 are not going to be at the next meeting but we'll  
2 talk about them?

3 A. That's my assumption.

4 Q. Okay.

5 A. I don't know if it's because they weren't  
6 available, or if there was some reason we didn't  
7 invite them.

8 Q. Do you recall what your discussion with  
9 Census was about Google at that time?

10 A. I don't recall, but I still believe this  
11 is just about how to engage more regularly about  
12 misinformation, or whatever -- whatever Census had  
13 done with Google and YouTube, should we have a  
14 similar structure with CDC. I believe that is what  
15 is not resolved in these chains.

16 Q. All right. And then Mr. Onyimba asked you  
17 another question on Friday April 2nd, 2021.

18 A. Mm-hmm (affirmative).

19 Q. He says: "Thanks again for your time this  
20 week. Attached are some of the claims we discussed  
21 for your reference," and they are not attached so we  
22 can't see those. But it says: "On a separate but  
23 related note would you happen to know if the CDC has  
24 statistics on hospitalization or death for people in  
25 the 40-49 age category who do not have underlying



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1 health conditions or co-morbidities?"

2 You see that?

3 A. Yes.

4 Q. Do you know why he was asking you that?

5 A. No, I don't know why he was asking me  
6 that.

7 Q. And you responded on April 5th that you  
8 couldn't respond over the weekend, but then you -- I  
9 think you sent him this chart?

10 A. Yes.

11 Q. What is that chart?

12 A. I thought that this chart would answer his  
13 question. It's the -- it was from the CDC's data  
14 tracker. It's a chart on hospitalizations.

15 Q. But it's a chart of people with asthma;  
16 right?

17 A. That's -- the link worked -- you could --  
18 that's a drop-down where you can pick anything you  
19 want I think I'd screenshot so he'd know what was  
20 going to be on the link.

21 Q. So you could pick without asthma if you  
22 wanted?

23 A. Yeah. I think I just was showing him what  
24 it was.

25 Q. Okay.

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1 A. But the link was more interactive.

2 Q. Okay. And so if he went there, if you go  
3 to this website, theoretically he can take out  
4 asthma and put in whatever age range he wants?

5 A. Mm-hmm (affirmative). And you could pick  
6 a different major category or an age.

7 MR. VECCHIONE: Thank you. Put that  
8 aside.

9 (Plaintiffs' Exhibit 30 marked.)

10 BY MR. VECCHIONE:

11 Q. Plaintiffs' Exhibit 30. Again, could you  
12 just tell us the subject matter and the date and  
13 then read it to yourself.

14 A. Subject: Follow up on mis-info  
15 conversation. 4/12/21. 4 -- yeah, 2021. Sorry.

16 Okay.

17 Q. So would you agree with me that this is  
18 also, if you look at Plaintiffs' Exhibit 29, that  
19 bottom link you had sent is the same link, and then  
20 there is just a new chain on the top of this?

21 A. Yes.

22 Q. And then you ask him: "Can you give me an  
23 idea what topics we'll be covering? But yes, I'll  
24 ask them to attend."

25 I guess we ought to read. Could you

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1     **please read to me what question he asked you?**

2             A.   "For tomorrow's call would it be possible  
3     to include Cynthia or other COVID-19 treatment SMEs  
4     to follow up on some additional questions?"

5             Q.   And then you say:   "Can you give me an  
6     idea of what topics we'll be covering?   But, yes,  
7     I'll ask them to attend"?

8             A.   Yes.

9             Q.   Was this a BOLO meeting or a regular  
10    meeting?   Like, was this for something that had just  
11    occurred that you wanted to alert them to, or was  
12    this a regular meeting?

13            A.   I don't believe this was a BOLO meeting  
14    because I don't think we had started BOLO meetings  
15    in April.   I think we started those in May.   I don't  
16    know for sure, but I don't feel like that's what  
17    this was.

18            I -- without that attachment, I don't  
19    remember what it was, but it wasn't uncommon for  
20    them to have just general questions about things and  
21    ask us to bring people to a meeting to help go over  
22    it.   Maybe they were trying to display something in  
23    the search or whatever.   I just -- I don't remember  
24    this context.

25            (Plaintiffs' Exhibit 31 marked.)

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1 BY MR. VECCHIONE:

2 Q. All right. Go to Exhibit 31.

3 A. Thank you.

4 Q. Once again for Exhibit 31 could you tell  
5 me the date and the subject matter line, and then  
6 read it to yourself.

7 A. Subject: Omicron page. Sent December 21,  
8 2021.

9 Okay.

10 Q. All right. We can go to the back again,  
11 the last page. And you have an email exchange you  
12 sent on December 21, 2021 at 10:38?

13 A. Yes.

14 Q. Who did you send it to?

15 A. That's -- I -- probably to Jan and  
16 Stanley.

17 Q. Okay. And why are you sending information  
18 about Omicron-specific pages to them?

19 A. Very similar to how I described how we've  
20 been working with them. This was a really big thing  
21 at the time, and they are trying to also be sure  
22 that people can find things in the search results,  
23 and they were -- they were highlighting CDC content  
24 and what they -- I call it the knowledge panel,  
25 those little tabs on Google.

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1           So, if something big like this was  
2   happening I would let them know if we had new key  
3   pages that they were likely getting a high number of  
4   searches on. And I'm pretty sure everyone was  
5   searching for Omicron around December of 2021. So  
6   that is why I sent it to them so they would have  
7   awareness of this brand new piece of content, and  
8   because I was seeing this -- I know. I have a  
9   point.

10           **Q. Right.**

11           A. This is a screenshot of what I call the  
12   knowledge panel with the tabs, and it wasn't coming  
13   up with the newer piece of content. So I wanted to  
14   alert them to it.

15           **Q. Okay. So what you've cut and pasted I**  
16   **think in there, says, like, coronavirus virus**  
17   **disease, and then there is overview statistic**  
18   **symptoms?**

19           A. Yes.

20           **Q. And then below it has the information on**  
21   **variants.**

22           A. Mm-hmm (affirmative).

23           **Q. All right. So let me understand this,**  
24   **because I'm not quite sure I'm getting it.**

25           You say: "I see our main Variant page."

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1       **That means CDC's variant page; right?**

2           A.   Yes.

3           **Q.   "Is coming up at the top of the**  
4       **Omicron/variant panel."**

5           **What -- was that Google search?**

6           A.   Yes.

7           **Q.   Or what are you referring to then?**

8           A.   So this -- when you search Google, you  
9       would get -- this is a screenshot --

10          **Q.   Got it.**

11          A.   -- of the Google results.

12          **Q.   Okay.**

13          A.   This is not our site. This is their site.  
14       They have these little things that say overview  
15       symptom -- I mean, statistic symptoms. Some of  
16       these were populated by CDC's content. There was  
17       one here that's cut off that said variants.

18          **Q.   Got it.**

19          A.   That was going to just the general  
20       variants page. But I know people were looking --  
21       because we'd saw all the search terms, they were  
22       looking for Omicron specifically, and I wanted to  
23       make them aware that they may want to swap the links  
24       out.

25          **Q.   Okay. And so you said: "So I want to be**

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1     **sure you were aware that this Omicron specific page**  
2     **is maturing and I expect further updates."**

3                 **What does that mean, the Omicron-specific**  
4     **page is maturing? The one at CDC?**

5                 A. Yes. This was our page, like -- you know,  
6     this is pretty early in the Omicron, I believe, I  
7     don't have the timetable in it, but -- so we're  
8     always updating our web pages as situations changes.  
9     So I don't think this -- at the time I sent it I had  
10    just tons of concrete information, but it -- we were  
11    going to add to it, and I thought it was a better  
12    place to send people that were searching for  
13    Omicron.

14                **Q. And what did you want them to do with it?**

15                A. Well, they have always been clear that the  
16    search results are not something that they mess  
17    with, but this part, the knowledge panel, is  
18    something that they manually assembled and worked  
19    with us on. So I thought they might want to switch  
20    this. (Indicating.)

21                **Q. Got it. And then he responds -- at least**  
22     **it looks like Jan Antonaros responds to you; right?**

23                A. Jan does, yes.

24                **Q. "Thanks for heads up. Our health team,**  
25     **including our Chief Health Officer, is tracking U.S.**

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1     **federal announcements today closely. Stanley and I**  
2     **will take this back to our team."**

3                   Do you know who the chief health officer  
4     **was?**

5           A. I think -- I think it may be Karen  
6     DeSalvo.

7           **Q. Okay.**

8           A. But on their end. That's their chief  
9     health officer. I think that's her title.

10          **Q. And when he says tracking U.S. federal**  
11     **announcements today closely, does he mean on Google?**  
12     **What does he mean by that, in your understanding?**

13                   MS. SNOW: Objection. Calls for  
14     speculation.

15     BY MR. VECCHIONE:

16           **Q. What did you understand that term?**

17           A. I don't remember. I'm guessing there was  
18     some announcements then, but I don't recall.

19           **Q. Had Google been instructed by the CDC to**  
20     **update following the CDC guidance?**

21           A. To update what?

22           **Q. To update their search engine, or for**  
23     **their panels to follow the CDC guidance?**

24                   MS. SNOW: Objection. Compound.

25     BY MR. VECCHIONE:



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1           **Q. You could answer if you understand.**

2           A. We did not instruct Google to update their  
3 search engines, or their panels. But I did suggest  
4 that -- and he said about CDC guidance. This was --  
5 this wasn't about -- this was a consumer page about  
6 what people would need to know about Omicron. I --  
7 it was more of just correcting what I thought was a  
8 better link in the panels that we had provided input  
9 on before.

10           Google is already -- has always made it  
11 clear that the search engine is sacred. There is  
12 nothing we can say to have them fix their search  
13 engine, or change their search engine to something  
14 else.

15           **Q. All right. But how about the panel**  
16 **itself? What -- I guess what I'm trying to**  
17 **understand is what -- you send them this panel --**  
18 **because apparently it's going to the wrong place on**  
19 **the CDC -- if you put in certain search terms, it's**  
20 **going to the wrong place on the CDC website?**

21           A. So I think what's hard to understand about  
22 this is this is not a typical way that Google  
23 presents things. You will have to ask Google how  
24 they considered when they added it. But my  
25 perception is that because of the substantial demand

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1 of searches for COVID, they added this that I call a  
2 knowledge panel. I think they may have another word  
3 for it. So that there is this layer before the  
4 search results come up, and it looks like this  
5 screenshot.

6 **Q. What you're pointing --**

7 A. But normally when you search, you don't  
8 get that on other topics. I think they do have it  
9 for a few other topics, but I rarely run into it  
10 when I do searches.

11 **Q. Okay. And then on December 21st I think**  
12 **Stanley Onyimba writes to you?**

13 A. Yes.

14 **Q. And he again said he explains how it's**  
15 **working and what they are going to do; right?**

16 A. Yes.

17 **Q. And then he says again: "As Jan mentioned,**  
18 **we are tracking announcements closely and will**  
19 **continue to update our products to reflect the**  
20 **latest guidance."**

21 **What did you understand that to mean?**

22 A. I think he is saying -- I -- gosh, I don't  
23 remember what was happening the week of December 21.  
24 There seems to be a reference to announcements that  
25 I just, at this moment I'm not sure. So I think I'm

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1 missing some context to what he's saying.

2 Q. And at the top?

3 A. Mm-hmm (affirmative).

4 Q. Then you say: "Glad you all are  
5 tracking." You sign off.

6 A. That would mean I'm glad you're watching  
7 what's happening, but I don't -- unfortunately, I  
8 can't remember what was happening that week that  
9 they're referencing. But when they say reflect the  
10 latest guidance, what I believe he's referring to is  
11 what I said before is that we helped populate some  
12 of these tabs.

13 Q. You can put that aside.

14 A. Okay.

15 (Plaintiffs' Exhibit 32 marked.)

16 BY MR. VECCHIONE:

17 Q. Exhibit 32. And once again I'll ask you  
18 for Exhibit 32 to read the subject line and the  
19 date, and then read it to yourself.

20 A. Subject: Request for problem accounts.  
21 Sent April 9, 2021.

22 Okay.

23 Q. All right. This is from you to Todd  
24 O'Boyle at the top. And then it's from Todd O'Boyle  
25 to you at the bottom, right, on April 8th, 2021?

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1 A. Yes.

2 Q. Can you read what he writes to you, and  
3 then your response?

4 A. "Hi, Carol, I'm looking forward to setting  
5 up regular chats; my team has asked for examples of  
6 problematic content so we can examine trends. All  
7 examples of misinformation are helpful, but in  
8 particular, if you have examples of fraud such as  
9 fraudulent COVID cures, fraudulent vaccine cards,  
10 et cetera, that will be very helpful."

11 And I said: "Yes, we will get back to you  
12 early this week."

13 Q. "Thanks for checking in"; right?

14 So did you -- had you talked to Todd  
15 O'Boyle before this exchange?

16 A. I don't recall. But I think this is  
17 around the time that Census was helping us, and I  
18 believe I asked Todd, similar to I asked the other  
19 ones, like: Is there a good way that we should  
20 start engaging on misinformation? And this is  
21 probably a followup to either that email or phone  
22 call.

23 Q. And so first, who's Todd O'Boyle? And he  
24 says at Twitter.com, so I assume he's at Twitter?

25 A. Yes, Todd's at Twitter. And I know he was

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1 a point of contact that I received for the topic of  
2 misinformation. I don't know what his title was  
3 specifically.

4 Q. Okay. Have you ever met him in person?

5 A. No. And as a clarification, I think I  
6 called him Todd O'Brien when you asked me earlier  
7 who the POCs were. Until I see this, I didn't  
8 remember his name correctly.

9 Q. So O'Boyle, different, yes.

10 A. Yes.

11 Q. That's fine. At this time did you set up  
12 regular meetings with Twitter?

13 A. My memory is is that we never got regular  
14 meetings with Twitter set up. I mean, around this  
15 time. I know they participated in the BOLO  
16 meetings, but I don't recall any kind of regular  
17 schedule with them. I don't remember many occasions  
18 we actually got on a phone call and discussed  
19 anything during COVID. There was a couple, but not  
20 many.

21 Q. How many BOLO meetings did you have with  
22 the social media companies from the beginning of  
23 COVID to, say, now?

24 A. I think that we only had two. And then I  
25 think that I sent one time a -- in lieu of a meeting

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1 a PowerPoint. And I didn't recall it but we sent  
2 another PowerPoint regarding that lab issue that was  
3 in a previous exhibit.

4 Q. Do you know who directed Mr. O'Boyle to  
5 send misinformation on Twitter to you?

6 MS. SNOW: Objection. Mischaracterizes  
7 testimony.

8 A. Say again.

9 BY MR. VECCHIONE:

10 Q. Excuse me. Do you know who directed him  
11 to ask you for examples of misinformation?

12 A. No.

13 Q. And do you know whether you sent him any?

14 A. No.

15 Q. Okay.

16 A. Could --

17 Q. Yeah, go ahead.

18 A. Can I get you to clarify? What do you  
19 mean by directed him to?

20 Q. I just wanted to -- I'll put it this way.  
21 Todd O'Boyle was your point of contact with Twitter?

22 A. Yes.

23 Q. Was -- did you know of anyone over him  
24 telling him to do things?

25 A. That's how I interpreted it. No.

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1           **Q. He says that examples of misinformation**  
2   **are helpful, particularly fraud. Do you know what**  
3   **he was doing that it would be helpful to him to get**  
4   **this information?**

5           A. I don't remember the exact context of this  
6   email, but I believe, as I mentioned before, this  
7   was probably part of me saying how could we work  
8   together on misinformation.

9           And it sounds like he's kind of wondering  
10   what we're seeing that we want to bring up, and he's  
11   asking for some examples. This is how I'm reading  
12   it now. And it sounds familiar based on what we,  
13   you know, my memory of this time.

14           MR. VECCHIONE: You can put that aside.  
15           (Plaintiffs' Exhibit 33 marked.)

16   BY MR. VECCHIONE:

17           **Q. Exhibit 33. And once again please read**  
18   **the subject matter and the date, and then read it to**  
19   **yourself for Exhibit 33.**

20           A. Twitter CDC examples. 4-13-21 xlsx is the  
21   extension. 4/14/2021.

22           **Q. Can you read his request to you, and then**  
23   **your response?**

24           A. This is the same email from before. "I'm  
25   looking forward to setting up regular chats. My

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1 team has asked for examples of problematic content  
2 so we can examine trends. All examples of  
3 misinformation are helpful, but in particular, if  
4 you have examples of fraud such as fraudulent COVID  
5 cures, fraudulent vaccine cards, et cetera, that  
6 would be very helpful."

7 **Q. And then this time you respond, though?**

8 A. Yes. I didn't recall if we sent them, but  
9 we did.

10 **Q. And what do you say?**

11 A. "The Census team put together this  
12 spreadsheet with four examples. Is this what you  
13 had in mind?"

14 **Q. And then you have examples: Vaccines**  
15 **aren't FDA approved. Fraudulent cures. VAERS data**  
16 **taken out of context and infertility; right?**

17 A. Yes.

18 **Q. What did you mean by the subject word --**  
19 **what was your understanding of the subject "request**  
20 **for problem accounts"?**

21 A. I don't know --

22 **Q. Okay.**

23 A. -- why the subject read that. But what he  
24 asked for in the email is for examples of  
25 misinformation.



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1 Q. Okay. And when you met with him, did you  
2 have a spreadsheet like this?

3 A. I don't -- we, we sent him a spreadsheet.  
4 I don't remember meeting with Todd --

5 Q. Okay.

6 A. -- besides the BOLO meetings. We might  
7 have, but I don't recall.

8 Q. And if -- and if you look at this email --

9 A. Mm-hmm (affirmative).

10 Q. -- it has attachments?

11 A. Yes.

12 Q. And it's Twitter CDC examples. So you've  
13 attached the spreadsheet to this?

14 A. Right.

15 Q. Okay.

16 A. I thought you were asking about when we  
17 met with him --

18 Q. No --

19 A. -- did we have spreadsheets.

20 Q. -- that's -- I was asking that.

21 A. Okay.

22 Q. Do you know who in the Census put this  
23 spreadsheet together?

24 A. I don't know for sure, but likely it was  
25 Christopher.

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1 Q. Christopher, remind me.

2 A. Lewitzke.

3 Q. Lewitzke, yes. I got it.

4 A. Something close to that name.

5 Q. We discussed him earlier. He appears on  
6 those emails?

7 A. Yes.

8 Q. Not a new guy?

9 A. No. I feel like we're saying his name  
10 wrong, though.

11 Q. I think that's correct. Lewitzke.

12 (Comment off the record.)

13 BY MR. VECCHIONE:

14 Q. Do you know whether that Census team had  
15 any medical professionals on it?

16 A. No.

17 Q. And what was the definition of fraudulent  
18 cures?

19 A. I don't remember what that was.

20 Q. And what is the category: Vaccines aren't  
21 FDA approved? Is that a claim, or is that a  
22 statement about vaccines that you're making? What  
23 is that?

24 A. I'm interpreting this whole list as things  
25 that they saw that were being stated as

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1 misinformation, that there were claims that vaccines  
2 aren't FDA approved.

3 Q. All right. And as far as VAERS data taken  
4 out of context, is your understanding that that's  
5 the same problem we discussed earlier with VAERS  
6 reports?

7 A. Yes.

8 Q. All right. It's not something different?

9 A. Yes.

10 Q. Let me rephrase. No, it's not something  
11 different?

12 A. I believe this VAERS data taken out of  
13 context is the same kind of thing we were discussing  
14 earlier.

15 Q. Thank you. And what do you believe  
16 "infertility" is?

17 A. I'm assuming this was people claiming that  
18 getting the vaccines led to infertility.

19 Q. Okay. And why did you give this chart and  
20 this information to Mr. O'Boyle?

21 A. He asked for examples. And I believe he  
22 was asking for these examples in this email because  
23 he was wondering what we would -- what would come up  
24 in BOLO meetings, or what we would be discussing. I  
25 think he wanted some sense of what we would be

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1 bringing to point out. That's my memory of it.

2 **Q. You can put that aside.**

3 MS. SNOW: Can we take like a five-minute  
4 break?

5 MR. VECCHIONE: Sure, sure. We have --  
6 we're -- I was cooking with gas, though, so, you  
7 know --

8 (Comments off the record.)

9 THE VIDEOGRAPHER: Off the record at 3:37.

10 (Recess 3:37 p.m. - 3:51 p.m.)

11 THE VIDEOGRAPHER: Back on record at 3:51.

12 BY MR. VECCHIONE:

13 **Q. And I will again direct the witness to**  
14 **read the subject line and the date, and then read**  
15 **this one. And this one is a little more hefty. You**  
16 **may want to take a look through it.**

17 MS. SNOW: What exhibit?

18 MR. VECCHIONE: Exhibit 34.

19 (Plaintiffs' Exhibit 34 marked.)

20 A. Subject line is COVID Misinformation.  
21 Sent 6/30/2021.

22 MS. SNOW: Mine is stapled out of order, I  
23 just realized. I want to make sure, it might just  
24 be mine, if you want to clarify.

25 MR. VECCHIONE: Let's do the Bates stamps.

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1 The bottom right I have it ends 496, 497, 498, 499  
2 and 500.

3 MS. SNOW: I think I have all those. They  
4 are just out of order. I just want to make sure no  
5 one else's was.

6 MR. VECCHIONE: No, I appreciate that.

7 MS. SNOW: Yeah.

8 MR. GILLIGAN: Is Carol's right?

9 MS. SNOW: Yeah.

10 A. Mine was correct.

11 BY MR. VECCHIONE:

12 Q. Tell me when you're ready.

13 A. I'm ready.

14 Q. All right. Can you identify Exhibit 34  
15 for me?

16 A. The subject line is COVID misinformation.  
17 6/30/2021.

18 Q. Do you recognize this document?

19 A. This, yes, feels familiar to me.

20 Q. And what is it?

21 A. It's a discussion about accessing  
22 Twitter's partner support portal where you can flag  
23 information to be reviewed by Twitter.

24 Q. Let's take a look. As usual, these chains  
25 start at the back.

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1 A. Mm-hmm (affirmative).

2 Q. I think the first one in this chain is  
3 May 10, 2021 at 1:50 p.m. and is that from you to  
4 Todd O'Boyle?

5 A. Yes.

6 Q. And I think that we've seen this list of  
7 items before to other -- to other social media  
8 outlets about --

9 A. Yes.

10 Q. And it's concerned -- it's mainly  
11 concerned about shedding?

12 A. And microchips.

13 Q. And microchips. And you attach sort of a  
14 chart. Could you tell us what that chart is?

15 A. Just a table of example posts regarding  
16 this, those two issues, vaccine shedding and  
17 microchips. It's not really a chart. It's just  
18 formatted in a table.

19 Q. Okay. Could you read what you say to him  
20 right above the table?

21 A. (As read) We wanted to point out two  
22 issues that we are seeing a great deal of misinfo  
23 about, vaccine shedding and microchips. These  
24 are -- the below are just some example posts. We do  
25 plan to post something shortly to address vaccine

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1 shedding, and I can send that link too. Our Census  
2 team copied here has much more info on it if needed.

3 Q. Okay. And so you have copied the Census  
4 team that we've discussed earlier.

5 A. Yes.

6 Q. And then you say -- could you read what  
7 you say next?

8 A. (As read) We're -- also we're standing up  
9 a BOLO COVID misinformation meeting and inviting all  
10 tech platforms. We are shooting for 12 p.m. on  
11 Friday for our first meeting. I'll include you on  
12 the invite but if you'd like to propose an alternate  
13 approach or would like me to include others, just  
14 let me know.

15 Q. All right. Tell us. We discussed a  
16 little bit the BOLO meetings that you had with the  
17 tech companies. And this BOLO COVID meeting, is  
18 this the first one? Where does it stand amongst  
19 those you've discussed?

20 A. I -- without having the date --

21 Q. Right.

22 A. -- in front of me, I think this is in  
23 reference to the very first meeting.

24 Q. Okay. And BOLO, we said, is be on the  
25 lookout. And this was -- you were sending this to

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1 Mr. O'Boyle so that he would be on the lookout for  
2 these things appearing on Twitter?

3 A. Yes.

4 Q. Did you have a prior conversation with him  
5 about this before you sent it, do you know?

6 A. I don't think I had a prior conversation  
7 about vaccine shedding and microchips, and these are  
8 examples of that. I mean, we saw on the other one  
9 we had sort of general conversations about how we  
10 could -- how we should have meetings or not have  
11 meetings. And I probably asked about the BOLO, like  
12 is the BOLO format, since it was used previously, a  
13 good format.

14 Q. Okay. And what is that format? So it's  
15 just -- we've seen the previous one, you said to him  
16 I'll include you on the invite, but if you'd like to  
17 propose an alternative approach, or would like me to  
18 include others, just let me know.

19 Did you have some view of whether Twitter  
20 wanted to meet alone, or separately? Is that what  
21 that means?

22 A. No. But I had a view that I couldn't tell  
23 if the platforms wanted to do the BOLO meetings the  
24 way Census had done them for their own work, so I  
25 was checking.



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1           **Q. Had you been at any -- invited to any of**  
2   **the Census BOLOs?**

3           A. No. I don't think they were doing BOLOs  
4 by the time that we were meeting.

5           **Q. So they had done that for the Census?**

6           A. That's my understanding.

7           **Q. And it had been in relation to the 2020**  
8   **Census?**

9           A. That's my understanding.

10          **Q. All right. Did you talk to anyone at**  
11   **Census about how they ran BOLO meetings?**

12          A. Yes.

13          **Q. Okay. In order to create your own?**

14          A. Yes.

15          **Q. And what did they tell you?**

16          A. Well, they explained how they did it. In  
17 fact, they drafted the slide deck. We talked about  
18 this earlier. They drafted it and showed me how  
19 they thought that we should do it, and that it was  
20 just we would give examples, we would give the  
21 science, and then they -- people could follow up  
22 separately. I mean, I believe we changed some of  
23 the format of the PowerPoint, what we did for CDC of  
24 course, but they -- you know, they kind of told us  
25 how they had done it in the past.

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1 Q. Okay. Let's go to his response to you.

2 He says to you -- and here we see

3 Mr. Lewitzke's name spelled correctly; right?

4 A. Yes.

5 Q. Okay. So Todd O'Boyle writes to you on

6 May 10, 2021 on Exhibit 34. "Hi, Carol. Thanks for  
7 sharing this."

8 And you took that to mean your chart,  
9 right, or table, you called it?

10 A. Yes.

11 Q. "Agree these are important trends to note.

12 A quick scan shows that at least some of these have  
13 been previously reviewed and actioned. I will now  
14 ask the team to review the others."

15 What did you take that to mean?

16 A. I don't know how Todd meant it  
17 specifically, but I interpreted it as Twitter made  
18 decisions about the areas of misinformation based on  
19 whatever policy they had.

20 Q. And he says: "Carol, remind me: Did you  
21 have a chance to enroll in our partner support  
22 portal? In the future that's the best way to get a  
23 spreadsheet like this reviewed."

24 So you mentioned that Partner Support  
25 Portal. What is that?

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1           A. My understanding of it, and I don't  
2 believe I ever successfully got into it, but it's  
3 similar to what I described for Meta. It's an  
4 offering where you log in and you can report  
5 misinformation or threats or problematic posted  
6 content in this portal, and it puts it in a system  
7 for review.

8           **Q. Did you know what happened at Twitter to**  
9 **reports that were deemed actionable?**

10          A. I assume similar to Meta that they  
11 probably had multiple options. I am sure some were  
12 removed. I am sure some may have had -- were  
13 flagged. I see flags all the time on the Twitter  
14 posts. I am sure some were just maybe -- I don't  
15 know what they do, but maybe they weren't  
16 distributed as much on peoples' feeds.

17          **Q. Where do you see Twitter? Do you have a**  
18 **Twitter?**

19          A. Yeah. I mean, my responsibility is social  
20 media for CDC, so I do look at Twitter, and we have  
21 Twitter accounts at CDC.

22          **Q. And CDC -- well, I'll just go back for one**  
23 **second. You -- prior -- on May 10 you were**  
24 **discussing a Friday meeting that you'd invited**  
25 **Mr. O'Boyle to. And do you know whether that**

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1     **meeting occurred?**

2             A.    I mean, I think we set up the first BOLO  
3     meeting in May.  And this was May 10th, and the  
4     Friday was there so I suspect it did occur.

5             **Q.    Okay.  And you said you didn't use the**  
6     **portal.  Did anyone else at CDC use the portal?**

7             A.    No, I don't -- I don't recall anyone else  
8     trying to get access besides myself.

9             **Q.    Had you talked to him about the partner**  
10    **support portal beforehand, before this email chain?**

11            A.    I don't remember.  I'm inferring from this  
12    chain that perhaps not.

13            **Q.    All right.  Had you talked to Census about**  
14    **the portal?**

15            A.    I don't recall if we discussed the Twitter  
16    portal per se.  But I did know from discussions with  
17    them that one technique I think that they used was  
18    using portals to -- for their work to report  
19    information.  I don't remember if we discussed  
20    Twitter or not.

21            **Q.    Okay.**

22            A.    Or if it was all about Meta.

23            **Q.    But it was your understanding that Census**  
24    **did use such devices when offered?**

25            A.    That, or they told me it was an option for

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1 us. I'm worried I'm mischaracterizing their work  
2 with very little actual memory on it.

3 Q. Okay. And you respond to him: "Todd, I  
4 don't think we have info on how to enroll, but we'd  
5 be happy to get on it if you'd send some info";  
6 right?

7 A. Yes.

8 Q. And he responds that -- on May 10th at  
9 8:51, he says he's happy to enroll you, and it  
10 allows you a special, expedited reporting flow in  
11 the Twitter Help Center. That's the purpose of it.

12 A. Yes, I see that.

13 Q. What's the Twitter Help Center?

14 A. The portal is part of their help center  
15 somehow. I mean, I'm not an expert, but I -- it's  
16 seeming -- I think the screenshot might even show  
17 how it's part of it.

18 No, it doesn't. But I believe it's like a  
19 link on the help center page.

20 Q. And he says it worked very well with  
21 Census colleagues last year; right?

22 A. Well, there we go.

23 Q. Yeah.

24 A. That's why he came up with that.

25 Q. Okay. And did you give him a Twitter

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1     **account to enroll?**

2             A. I asked him -- I can see that I asked him  
3     does it have to be our official CDC account, or is  
4     it supposed to be personal. And I gave him my  
5     personal one.

6             **Q. Okay. And what was your problem with**  
7     **using -- did you have a technical problem with using**  
8     **it? What happened?**

9             A. It was not a priority for me, for one. I  
10    wasn't thinking that we would probably want to use  
11    this portal on a regular basis. I thought that let  
12    me just myself, instead of asking my staff to get  
13    involved, I want to see what the portal is myself  
14    because I wasn't able to look at the Meta portal  
15    myself because you had to be administrator.

16            So I wanted to look at it and see what it  
17    it looked like, but I -- it wasn't a priority. So  
18    every now and then I would try to get on it, and I  
19    don't remember ever solving the problem. All I know  
20    is I think when I clicked it nothing happened, or I  
21    didn't get drop-downs. That's -- and I felt like  
22    maybe I wasn't in the right place.

23            **Q. Okay.**

24            A. But I am --

25            **Q. Okay.**

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1 A. -- unclear of what exactly was wrong.

2 Sorry.

3 Q. I got it. But here's -- so then I see  
4 May 24th, 2021, 2:28 email from Christopher Lewitzke  
5 that I think Todd forwards it to you. Is that how  
6 that works? How does that page -- could you tell me  
7 what's happening on this page?

8 A. The way the reply works from the email  
9 it's unclear if I was copied or not, so I can't say.  
10 But I definitely was copied on Todd's response to  
11 Christopher. I'm not sure if Christopher copied me  
12 on his email to Todd, which is what I think you're  
13 asking me.

14 Q. Okay. But on May 24th at least it looks  
15 like Lewitzke sent a note to Todd?

16 A. Mm-hmm (affirmative). And then 30 minutes  
17 later Todd hit reply with everyone on it.

18 Q. Okay. And Carol says I had -- (as read)  
19 Carol and I had a sidebar, and I requested her  
20 account be enrolled. Your email reminds me that the  
21 process should have been completed by now. I'll  
22 check with the team to make sure it's properly  
23 enrolled.

24 And that's your recollection that's how it  
25 occurred?

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1           A. That's my recollection. I don't recall  
2 the sidebar, but I do know that I wanted it to be  
3 CDC people in these portals versus Census. I felt  
4 like that was more appropriate.

5           **Q. And remind me, who's Christopher Lewitzke?**

6           A. He's a -- he's a Census contractor.

7           **Q. Okay. With this Reingold outfit we talked**  
8 **about?**

9           A. Mm-hmm.

10          **Q. He says: We want to have at least some**  
11 **CDC accounts whitelisted. What does whitelisted**  
12 **mean?**

13          A. Let me read this. I'm not sure.

14          **Q. You've never heard that term before?**

15          A. I have heard of whitelisted. I don't  
16 understand it in this context.

17          **Q. What was your understanding of whitelisted**  
18 **meaning?**

19          A. Like my under -- my general understanding  
20 of whitelisting is you can have kind of a list of  
21 things that maybe -- of servers that are allowed or  
22 not allowed is an example of a list of whitelist.

23          **Q. Okay. And then do you know which Census**  
24 **accounts had access to this portal?**

25          A. My memory was that none. And I think this



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1 email supports my memory, and that Todd responding  
2 that I'm going to be the account that's enrolled.

3 Q. Oh.

4 A. For CDC.

5 Q. For CDC.

6 A. For CDC at least.

7 Q. But do you know which Census accounts?

8 A. Oh, no.

9 Q. Okay.

10 A. I wouldn't have any knowledge of what they  
11 did.

12 Q. Okay. And then let's read up to May 27th,  
13 2021, 2:30. And you say haven't seen anything come  
14 through. And then Todd says: You should now be  
15 up -- should be fully -- and period. You should be  
16 fully period, he says.

17 Then he says: "When you visit the Twitter  
18 help center logged in with your account you should  
19 see additional reporting options."

20 Do you know what he meant by that?

21 A. Yes. This portal, like I think when  
22 anyone goes to the health center -- help center, I  
23 think there is, like, you can flag threats and  
24 things, I believe. I think he was saying I would  
25 have had something more. But I never could locate

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1 that.

2 Q. Okay. And you tell him: "Hi, Todd. I  
3 have been trying to enter info but I realize I have  
4 been unclear on where to enter them. I went to  
5 /forms and there is a drop down on things to submit,  
6 but none of them seem relevant to misinformation.  
7 Am I in the right place?"

8 So is that the problem you had?

9 A. I -- based on this email I think it was  
10 one of the problems. I don't -- I think at the  
11 beginning I didn't get the links, I couldn't find it  
12 on the help center. There's probably additional  
13 chains, I suspect, regarding this.

14 Q. Okay. But you don't recall what they  
15 were?

16 A. No.

17 MR. VECCHIONE: All right. Put that  
18 aside.

19 (Plaintiffs' Exhibit 35 marked.)

20 BY MR. VECCHIONE:

21 Q. 35. And once again for Exhibit 35 tell me  
22 what the subject line is and what's the date at the  
23 top.

24 A. The subject line: BOLO CDC lab alert  
25 misinformation. Sent September 2nd, 2021.

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1 Q. And I think we've seen this alert before  
2 for another social media recipient, am I correct  
3 about that?

4 A. You're correct.

5 Q. All right. Is this anything different  
6 than when you testified last time about this BOLO?

7 A. The only difference is this email is going  
8 to Twitter.

9 Q. Okay. And what was your intent in telling  
10 Twitter through O'Boyle to be on the lookout for  
11 misinformation about PCR testing?

12 A. I mean, I, again, I think CDC's role is to  
13 provide the facts around issues. We saw this  
14 confusion about this alert brewing and more posts  
15 were going up with confusion, and we thought it  
16 would be a good idea to provide the platforms with  
17 the facts before it became something bigger.

18 Q. And what did you believe he'd do with the  
19 information?

20 A. I believed that they would consider it in  
21 their -- I knew their policy teams or their trust  
22 teams or misinfo teams, whatever they -- whatever  
23 they called their teams, would evaluate it.

24 Q. And perhaps remove it?

25 A. I knew that removal was one of the options

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1 that they had, yes.

2 MR. VECCHIONE: You can put that aside.

3 (Plaintiffs' Exhibit 36 marked.)

4 BY MR. VECCHIONE:

5 Q. Exhibit 36. And once again, if you could,  
6 for Exhibit 36 tell me the date and the subject  
7 line, and then read it to yourself.

8 A. Subject: Call or VC-Facebook weekly sync  
9 with CDC (CDC to invite other agencies as needed.)  
10 And this was sent on April 15, 2021.

11 Q. And then please read it to yourself.

12 A. Okay.

13 Q. All right. Do you know who created the  
14 meeting agenda there?

15 A. I think Payton probably inserted these  
16 agenda items because it was her appointment.

17 Q. And what was on that agenda?

18 A. New attendees intro, CDC needs/questions,  
19 FB product updates/feedback requests. (COVID-HUB).  
20 And then COVID-19 projects, and several are listed  
21 CMU/FB data survey. Update -- data survey update.  
22 Excuse me. Misinfo collab status. Others.

23 Q. Let's go through this. What's COVID-HUB?

24 A. I believe the COVID-HUB is what they  
25 called when I mentioned you're on Facebook and you

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1 could search for COVID, they actually provided  
2 in-app content on COVID that they pulled from WHO,  
3 CDC and other sources and I believe they call that  
4 internally the COVID-HUB.

5 Q. All right. And I think we have some new  
6 names here in the middle. Let's see if we see most  
7 of them. Kang-Xing Jin. Do you know who that was?

8 A. Looks like a Facebook employee, but I  
9 don't recall.

10 Q. And I think we've discussed Raena Saddler,  
11 but I've forgotten. Do you recall?

12 A. I mean, she's with Facebook, or he is with  
13 Facebook, but I don't know who they are.

14 Q. All right. And then she cc'd a number of  
15 people. Do you recognize any of those names besides  
16 Liz Lagone?

17 A. Yes, Airton, the first name.

18 Q. Yeah.

19 A. He was definitely with Facebook, and he  
20 seemed to be an expert on like Facebook ads how to  
21 run Facebook ads.

22 Julia Eisman is someone we talked to  
23 regularly. I think she's in, like, their public  
24 relations type office. She occasionally would be on  
25 the calls with Payton. Kate Thornton, I don't

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1 recall. Carrie Adams, I mentioned is the new point  
2 of contact I have now. And Ursula Phoenix Weir was  
3 -- is someone at CDC. I assume that for this  
4 meeting she was probably deployed in a -- something  
5 that was related to what I thought was going to be  
6 discussed here.

7 **Q. And what was her title?**

8 A. Ursula's?

9 **Q. Yeah.**

10 A. I'm not sure. When people deploy into  
11 something -- Ursula probably had several roles  
12 during COVID, as many of us did. I just don't -- I  
13 can't tell why I invited her to this meeting from  
14 looking at this.

15 **Q. Where was she normally?**

16 A. I believe -- I believe. I believe she's  
17 in the National Center for Birth Defects.

18 **Q. Now, the subject says "Call or VC," I**  
19 **assume that's voice chat?**

20 A. Yes.

21 **Q. "Facebook weekly sync." That's**  
22 **synchronization with CDC?**

23 A. That's how I interpret sync, yes.

24 **Q. CDC to invite other agendas as -- agencies**  
25 **as-needed. Okay.**

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1                   **What did you understand CDC needs**  
2   **questions to be about in this agenda?**

3           A. I think that that was often just listed.  
4 I mean, it would just be if we had a question that  
5 we needed, we wanted to ask Facebook about, or if we  
6 had something that we -- was upcoming that we wanted  
7 their assistance with or something. I know, like,  
8 for instance, Airton's on this because sometimes  
9 we'd have technical questions about how to run an ad  
10 or the live chat, that kind of -- that we talked  
11 about earlier, how to make it work.

12           **Q. All right. And then the COVID-19**  
13 **projects, she seems to have split them up. Were**  
14 **they split up this way within CDC or within**  
15 **Facebook, to your knowledge?**

16          A. No. I think it's just a list of things  
17 that were just put together in one area. But I  
18 don't recall.

19           **Q. What's your understanding of CMU/FB?**

20          A. I think this was -- oh, gosh. I think  
21 this was about some surveying that Facebook was  
22 doing regarding COVID maybe, and they wanted to just  
23 let us know they were doing it. But I'm very fuzzy  
24 on that, on the details of it.

25           **Q. All right. And is data and survey**

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1       **separate?**

2           A. I think that's all one update. CMU at  
3 slash FB data survey update. That's how I believe  
4 this to be.

5           **Q. All right. And misinformation. "Misinfo"**  
6 **is misinformation?**

7           A. "Collab status" is one thing.

8           **Q. Oh, that's one thing?**

9           A. Yeah.

10          **Q. Okay. And "collab" is collaboration?**

11          A. Yes.

12          **Q. And then others, I take it, is everything**  
13 **else?**

14          A. Yes.

15          **Q. So when this meeting took place do you**  
16 **know if there is any notes or recordings of it?**

17          A. We didn't record them. I don't -- like  
18 I've been saying, I rarely took notes. If something  
19 was jotted down, it would have been in an email or a  
20 Word doc.

21          **Q. Do you recall if all these agenda items**  
22 **were discussed on this call?**

23          A. No.

24          **Q. What do you remember about that meeting?**

25          A. I don't remember the specific meeting at



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1 all.

2 MR. VECCHIONE: Okay. You can put that  
3 aside.

4 (Plaintiffs' Exhibit 37 marked.)

5 BY MR. VECCHIONE:

6 Q. 37. And once again for Plaintiffs'  
7 Exhibit 37 please read the date and the subject line  
8 of, and then read it to yourself, please.

9 A. Subject line: CDC "guides," in quotes,  
10 and this week's meeting. And that was sent on  
11 4/29/2021.

12 Okay.

13 Q. All right. And can you identify what this  
14 is?

15 A. This is an email chain about -- that's  
16 called "CDC 'Guides' and this week's meeting."

17 Q. Okay. And at this time -- I think we've  
18 talked about biweekly meetings. At this time could  
19 you have been having weekly meetings with Facebook?

20 A. We might have. There definitely were  
21 times that we were talking weekly.

22 Q. All right. Let's do it -- let's go to the  
23 back, the last page.

24 She writes to you: "Hi, Carol, we want to  
25 flag a couple of items for you this week," right?

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1 And she says: "Instagram Guides Promotion  
2 Opportunity. Our Instagram team is looking to run  
3 promotion to amplify vaccine-related Instagram  
4 Guides. We saw that CDC has a great one on its  
5 feed." And then she provides a link; is that right?  
6 Am I correct? Did I read that correctly?

7 A. Yes.

8 Q. What is an Instagram Guides? I --

9 A. I honestly don't remember. I noticed I  
10 added our social lead to pipe in more of the guides.  
11 I think it might have been like a reel, like the  
12 little video snippets you can see on Instagram. But  
13 I honestly cannot remember what they were at the  
14 time.

15 Q. Okay.

16 A. I don't know that Instagram guides still  
17 exist.

18 Q. Let's talk about it just for a moment,  
19 though, because we talked about various types of  
20 social media. Instagram is usually like a photo and  
21 then some words under it?

22 A. That is one type of Instagram post, and  
23 then there is more like a video version of it.

24 Q. Okay. And how long -- does the video run  
25 a long time like YouTube, or is it short?

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1 A. No, it's short.

2 Q. And then she says: "The team is planning  
3 to launch an in-feed promotion of the Guides on  
4 Monday."

5 What's an in-feed promotion?

6 A. If I'm not sure what they meant by in-feed  
7 promotion. But what I'm -- as reading this at this  
8 moment, I believe they were -- it would, you know,  
9 it would get highlighted more often in a user's  
10 feed. They would -- the content would be promoted  
11 more to the users in their scrolling.

12 Q. Okay. And then it says that this launch  
13 in-feed promotion would run for three weeks, and the  
14 anticipated reach is 60 to 80 percent of the people  
15 in the U.S. on Instagram.

16 So that's 60 to 80 percent of the people  
17 that -- the United States people on that platform,  
18 is that your understanding?

19 A. Yes.

20 Q. And then she says: (As read) "We wanted  
21 to know if the Guide above is up-to-date, or if  
22 you'd be willing to update it (if needed) and if it  
23 is something" you can include in the -- "we can  
24 include in the promotion. Happy to discuss further  
25 if this is something you may be interested in, or if

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1     **you have any questions."**

2                   **Did I read that correctly?**

3           A.   Yes.

4           **Q.   Who decides whether the guide is up to**  
5     **date or not?**

6           A.   That would be us because it's our post.

7           **Q.   Okay.**

8           A.   Like if the guide is like a story -- I  
9     called it a reel earlier, but a story is better for  
10    Instagram.  It's something that CDC has posted, so  
11    it's our content to update.

12          **Q.   Got it.**

13          A.   And I'll add, to clarify, I can see on the  
14    url it says "/CDC gov."  So it's definitely  
15    something we have posted, and if I'm incorrect about  
16    the format of it I still can tell it's something  
17    we've posted.

18          **Q.   Okay.  Then also "FYI", which I think is**  
19    **for your information, "we are hoping for an update**  
20    **on our COVID-19 misinfo reporting, but that is not**  
21    **ready for this week."**

22                **What did you -- did I read that correctly?**

23          A.   You read it correctly.

24          **Q.   And what did you take that to mean?**

25          A.   I am not sure, but I'm -- it might have

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1 been about those CrowdTangle reports and sending  
2 them to us.

3 Q. Can you read your response at 2:32 on the  
4 same day, the 28th?

5 A. Read the whole response?

6 Q. Yeah.

7 A. Okay. (As read) plus Jay to weigh in on  
8 that guide. I think he'll have the latest info. I  
9 think it would be great to get that kind of  
10 promotion on it. Thanks for offering. I still hope  
11 to get you some health equity info, but agree we can  
12 pull that meeting down tomorrow. Are you being  
13 asked by the White House to do anything on  
14 vaccine.gov or vaccinefinder? If so, can you share  
15 any plans in a nutshell via email?

16 Q. All right. So, first, what's health  
17 equity info?

18 A. I can't recall the context of why we were  
19 discussing it, or what prompted me to write that.  
20 But CDC had posted, I believe around this time,  
21 information on health equity. I'm thinking that we  
22 either -- they wanted it, or we wanted to mention it  
23 to them, but I don't recall which.

24 Q. And you asked about the White House. You  
25 asked her whether the White House is asking her to

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1 do anything on vaccine.gov or vaccinefinder. What's  
2 "vaccinefinder"?

3 A. Vaccines.gov originally was called  
4 vaccinefinder.gov. But we renamed it vaccine.gov or  
5 vaccines.gov when the vac- -- COVID vaccines came  
6 out. But a lot of us still think of it as the  
7 "vaccinefinder site" because when you go to that  
8 site, in effect, the main thing it does is you can  
9 put in your ZIP code and find out where COVID  
10 vaccines are offered. So it helps you find the  
11 vaccine.

12 Q. Why did you suspect the White House was  
13 asking her or Facebook to do something about that  
14 site?

15 MS. SNOW: Objection, calls for  
16 speculation.

17 BY MR. VECCHIONE:

18 Q. And you wrote down: "Are you being asked  
19 by the White House?" You asked her that. Why did  
20 you do that?

21 A. I --

22 MR. GILLIGAN: You asked her why she  
23 suspected something.

24 BY MR. VECCHIONE:

25 Q. Why did you -- why did you ask whether the

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1     **White House had asked her to do anything?**

2             A. I don't remember specifically. But it was  
3     not uncommon because there was multiple major  
4     agencies such as the White House working on things.  
5     And so Payton had meetings with lots of federal  
6     agencies, and we were -- the vaccine.gov site was  
7     something CDC, HHS and the White House were  
8     collaboratively working on.

9             So it might have been me just trying to  
10    understand if we were about to promote vaccines.gov  
11    on -- maybe it was in the guides; maybe I was just  
12    trying to see if she knew something related to what  
13    we were doing. We did overlap from time to time and  
14    ask Payton similar things.

15            **Q. So you knew that Facebook could also have**  
16    **been being contacted by other agencies besides CDC?**

17            A. Yes. They -- she -- I'm fairly confident  
18    that she was speaking to several federal agencies  
19    during the COVID response.

20            **Q. Including HHS?**

21            A. I believe so, yes.

22            **Q. And including the White House?**

23            A. I think. I believe so, yes. I don't -- I  
24    didn't ask her her meeting schedule, but she often  
25    would be up to date.

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1           **Q. Did she ever mention to you who her**  
2   **contact was at the White House?**

3           A. No.

4           **Q. Do you know that of your own knowledge**  
5   **from some other source?**

6           A. No.

7           **Q. Were you ever on a call with any of the**  
8   **agencies in the White House?**

9           A. Yes. Sometimes what I remember was that  
10 when vaccines.gov was coming out, that was involving  
11 multiple agencies including people at the White  
12 House and the U.S. Design System team and HHS and  
13 CDC, and I do believe there might have been some  
14 joint calls to discuss some of the promotion of  
15 vaccine.gov.

16           **Q. All right. And U.S. Design are the people**  
17 **who design the websites for the government?**

18           A. Yes. I think in my mind when I say White  
19 House, they are the people in the White House that  
20 I'm talking about because that's my counterparts in  
21 the White House are digital people. I should have  
22 clarified. I should have clarified that earlier.

23           **Q. All right. And do you know of anyone, any**  
24 **names?**

25           A. There was several of them that were



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1 involved with vaccines.gov.

2 Q. Okay. Do you recall any names?

3 A. I really don't.

4 Q. All right. Did anyone from the White  
5 House, any office in the White House, direct you to  
6 engage with social media companies independent of  
7 your supervisor at the CDC?

8 A. No.

9 Q. All right. Let's take a look at the next  
10 one. Payton to you on April 29 at 6:23. Can you  
11 read her response to you?

12 A. (As read) Thank you, Carol. Regarding  
13 vaccines.gov -- or vaccine.gov -- we haven't had any  
14 specific requests from the White House on this.  
15 We've been working at the state level on our vaccine  
16 finders tools and promotions. I also want to  
17 followup on our COVID-19 misinfo reporting. Our  
18 team is looking to schedule a training with CDC and  
19 Census colleagues who will be reporting content  
20 through the tool. It will cover Community  
21 Standards, COVID-19 misinformation and harm policies  
22 and a walkthrough of the reporting tool.

23 Q. Let's stop there.

24 A. Okay.

25 Q. Did that training occur with CDC?

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1           A. To my recollection, that training never  
2 occurred. But I might not have been a part of it,  
3 and that's why I don't recall it.

4           **Q. Do you recall whether or not Census was**  
5 **involved in such a training?**

6           A. No, because I'm not sure that we had the  
7 training, so I don't know who would have attended  
8 it.

9           **Q. Okay. And then could you continue reading**  
10 **where you have the asterisks?**

11           A. "Could you share back some times that may  
12 work to schedule? We'll probably need 1.5 hours to  
13 cover. If needed, we can break the training up if a  
14 longer block is hard to schedule."

15           **Q. All right. And then you'll respond that**  
16 **you'll check with Census; right?**

17           A. Yes.

18           **Q. But do you know whether or not you checked**  
19 **with Census?**

20           A. No.

21           **Q. Do you recall anything more than what**  
22 **you've told me about this training?**

23           A. I recall that when this -- well, can I ask  
24 my -- can I ask counsel a question first?

25           MR. GILLIGAN: Yes, you may.

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1 (Witness conferring with counsel.)

2 MR. VECCHIONE: Let the record reflect  
3 that the witness has consulted with counsel.

4 BY MR. VECCHIONE:

5 **Q. Can you answer my question?**

6 A. Oh. Yes. When we went through discovery,  
7 I was pulling documents for discovery, and I was  
8 asked if we had used the portal by I believe the CDC  
9 lawyer that I have been working with, and I could  
10 not recall.

11 So I went through a lot of emails at that  
12 time, and I concluded that my memory was correct  
13 that we really did not use the portal more than the  
14 one time that I mentioned earlier, and that's why I  
15 don't believe the training occurred. I don't have  
16 any memory of going through the training, or setting  
17 up the training. But it's pos- -- I mean, I have a  
18 lot of emails, but that was what I thought after I  
19 did discovery.

20 BY MR. VECCHIONE:

21 **Q. Right. And that's what you think now**  
22 **sitting here?**

23 A. Yes.

24 **Q. All right. Thank you. You can put that**  
25 **aside.**

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1 A. Okay.

2 (Plaintiffs' Exhibit 38 marked.)

3 BY MR. VECCHIONE:

4 Q. And, again, for Exhibit 38 just tell me  
5 the date and the subject line, and then read it to  
6 yourself.

7 A. I'm sorry. The subject, Wyoming issue.  
8 April 30th, 2021. Okay.

9 Q. So let's start from the back again.

10 On April 23rd you write to Payton Theme  
11 again. Can you write what you say to her?

12 A. (As read) The Wyoming Department of  
13 Health mentioned to one of our groups that the  
14 algorithms that Facebook and other social media are  
15 apparently using to screen out postings by sources  
16 of vaccine misinformation are also apparently  
17 screening out valid public health messaging,  
18 including Wyoming Health communications. They were  
19 looking for advice about how to work with social  
20 media networks to ensure that verifiable information  
21 sources are not blocked. Do you have someone that  
22 she could talk to -- sorry. Do you have someone  
23 that could perhaps talk to the state about this?

24 Q. And then before you get a response you say  
25 on top: "Anything you all can do to help on this?"

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1 I guess -- you say that five days later, is that why  
2 you sent it again?

3 A. They hadn't responded.

4 Q. Okay. Who decided what a verifiable  
5 information source was at this time?

6 A. I don't know.

7 Q. Now, on April 28th at 6:37 you get an  
8 email back from Adrien Genelle, I think or Genelle  
9 Adrien. Excuse me.

10 A. Yes.

11 Q. And she says that her colleague can solve  
12 this problem?

13 MS. SNOW: Objection, mischaracterizes  
14 document.

15 BY MR. VECCHIONE:

16 Q. Did she direct you to another person to  
17 take care of the problem?

18 A. She looped in another colleague to provide  
19 additional guidance, or to connect directly with the  
20 state health department that asked.

21 Q. Okay. And then you say, you tell her that  
22 you don't have an email chain to loop anyone in  
23 because it was received via meeting. Do you know  
24 what meeting it was received in?

25 A. Yes. Well, no, I don't know exactly which

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1 meeting it was in, but it was just relayed to me  
2 during one of the COVID internal meetings that, hey,  
3 we got a call from Wyoming, do we know anyone to  
4 connect them with.

5 Q. And you connected to Holly Scheer? Is  
6 that what you're doing there?

7 A. Yes.

8 Q. And do you know anything more about Eva  
9 Guidarini than what she states here about her? Did  
10 you ever deal with her?

11 A. No.

12 MR. VECCHIONE: You can put that aside.

13 Exhibit 39. I believe they are all  
14 one-pagers, and they are all stapled together, so  
15 give me one moment.

16 (Plaintiffs' Exhibit 39 marked.)

17 BY MR. VECCHIONE:

18 Q. Once again, could you just read the -- 39,  
19 could you read the subject line and the date?

20 A. Join with new info E: Call or VC-Facebook  
21 weekly sync with CDC (CDC to invite other agencies  
22 as needed). May 6, 2021.

23 Q. Okay. Tell me when you're ready.

24 A. Oh, I'm ready. I'm sorry.

25 Q. And I think we've seen this meeting

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1 before, but I just want to make sure it's not a  
2 separate one. Was -- this was just with Facebook;  
3 right?

4 A. This was.

5 Q. Okay. And the -- and we've already  
6 discussed the items that were -- that were on the  
7 agenda; right?

8 A. We did. But I'm just now noticing that  
9 the items in the agenda might be a cut-and-paste  
10 from the same thing and maybe weren't updated  
11 regularly.

12 Q. I see. That's my question. All right.  
13 So do you have any memory of this particular  
14 meeting?

15 A. I don't.

16 Q. And you don't recall what was said one way  
17 or another?

18 A. Don't recall, excuse me?

19 Q. Okay.

20 A. I didn't catch -- I'm sorry. I didn't  
21 catch what you asked me.

22 Q. Oh, oh. Do you recall anything that was  
23 said at that meeting?

24 A. On May 6? No.

25 Q. And do you know if the format was in Zoom,

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1 or what the format, or Microsoft Teams, or in  
2 person, or?

3 A. It was always on either teams or they had  
4 BlueJeans that we used occasionally.

5 Q. Okay. What's BlueJeans?

6 A. It's something like a Teams or a Zoom.

7 Q. Okay. And, once again, do you know if  
8 there is any notes or record kept of the meeting?

9 A. I did not take any notes at the meeting  
10 that I recall. I mean, same answer I have been  
11 giving. If there were any, it was minor and they  
12 would have been in Word or email.

13 Q. Okay.

14 MR. VECCHIONE: 40.

15 MR. GILLIGAN: I remember when everybody  
16 just used Skype when it was simpler times.

17 (Plaintiffs' Exhibit 40 marked.)

18 BY MR. VECCHIONE:

19 Q. Exhibit 40. Once again the date and the  
20 subject line, and then read it to yourself.

21 A. Subject line: COVID BOLO meetings on  
22 misinformation, sent on May 10, 2021.

23 Okay.

24 Q. All right. Let's go back to the back page  
25 of this that's Bates number 682.



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1 A. Okay.

2 Q. Now, this is -- I think we've said this  
3 date. It's May 10th of 2021?

4 A. Yes.

5 Q. And you send to Facebook the COVID BOLO  
6 misinformation meeting request; right?

7 A. Yes.

8 Q. And could you please read that for me?

9 A. (As read) We would like to establish  
10 COVID BOLO meetings on misinformation and invite all  
11 platforms to join the meetings. We are aiming for  
12 the first one on Friday at noon. I know you were  
13 considering a possible process on your end, but we  
14 wanted to start here just as an interim first step.  
15 Are there direct POCs on your end I should include  
16 on the invite? I'm happy to chat if better, thanks.

17 Q. All right. Now, so this is the first BOLO  
18 meeting. Does that comport with your recollection?

19 A. This is a note that I'm about to send an  
20 appointment for the first BOLO meeting and asking  
21 them who to include.

22 Q. All right. And we've already said POCs --

23 A. Yes.

24 Q. -- are the point of contacts; right?

25 A. Mm-hmm (affirmative).

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1 Q. And you said: "I know you are considering  
2 possible process on your end."

3 What did you mean by that?

4 A. As I mentioned, that I was engaging with  
5 the platform saying what format would be best for us  
6 to talk about this. And I think there were  
7 references in the exhibit a couple of times where  
8 they said they were thinking internally about what  
9 would be best. So I think I was just referencing  
10 that I knew that they were considering it as well.

11 Q. Do you know what the topics -- did you  
12 know what the topics for the BOLO were when you sent  
13 this out?

14 A. I don't know if I did or not.

15 Q. All right. Let's go to the next page back  
16 where we have -- I believe this is from Jan  
17 Antonaros to you, but he includes your email to him;  
18 right?

19 A. This -- the bottom part --

20 Q. Mm-hmm (affirmative).

21 A. -- is where I sent a similar note to  
22 Google, which is Jan.

23 Q. Okay.

24 A. And I was telling her that we would like  
25 to invite the digital platforms to attend the BOLO.

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1 I think it was me sending the appointment or a  
2 heads-up that it was coming. I can't -- it looks  
3 like maybe I -- this is an actual appointment.

4 Q. Okay.

5 A. But I tried to send each of them a  
6 personal note that we were doing it.

7 Q. And in this one you actually spelled out  
8 be on the lookout; right?

9 A. I did.

10 Q. And was that because you hadn't discussed  
11 it with them before, or did you have some concern  
12 they wouldn't know what it was?

13 A. I don't know why I didn't do it that time.

14 Q. All right. And there is Kevin Kane here  
15 with the email address [REDACTED]@Google.com. Who is  
16 that?

17 A. I don't remember Kevin, but this indicates  
18 that he was from YouTube.

19 Q. Okay. And do you recall having  
20 discussions with YouTube?

21 A. YouTube would occasionally -- people from  
22 YouTube would occasionally be on our regular  
23 meetings, depending on what we talked about. And  
24 because YouTube has the most content, like, hosting,  
25 they -- they were at the -- they were a part of the

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1 BOLO meetings, I believe, that Kevin attended  
2 probably, or someone from YouTube did.

3 Q. And you responded: "Great. I was going  
4 to ask about Kevin."

5 A. Yeah. Maybe I remembered who Kevin was at  
6 the time.

7 Q. Okay. And then finally the front page.

8 A. That's a repeat of -- oh, no, that's not.  
9 I apologize. I'm looking at the wrong one.

10 Q. And here you're sending this to the Google  
11 folks?

12 A. Yes.

13 Q. Why don't you read it for the record?

14 A. "We would like to establish COVID BOLO  
15 meetings on misinformation and invite all platforms  
16 to join the meetings. We were aiming for the first  
17 one on Friday at noon. We heard through the  
18 grapevine that Kevin Cain at YouTube would want to  
19 join. Are there other POCs on your end I should  
20 include on the invite?"

21 Q. All right. You said YouTube. Who's  
22 YouTube related to, is it Google or Facebook?

23 A. YouTube is a Google property.

24 Q. Okay.

25 A. Or platform.

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1           Q. And is it your recollection that you did  
2 have a meeting on Friday?

3           A. I think we did, but I don't have the exact  
4 date. But I believe we had -- that's when we had  
5 the first BOLO meeting.

6           Q. All right. And do you have any list of  
7 who actually showed up and was an attendee?

8           A. No.

9           Q. All right. And, once again, it would be  
10 on your calendar as far as if it happened?

11          A. Now, to clarify I don't remember keeping a  
12 list of who attended. Maybe Census might have  
13 because this is something they were arranging. But  
14 I don't recall it being sent to me. It could have  
15 been, but I don't believe so.

16          Q. So they were helping you arrange this  
17 because they'd done it before, this particular  
18 meeting?

19          A. Yes. I mean, I mentioned that they  
20 drafted the slides.

21          Q. Right.

22          A. And, you know, Chris participated in the  
23 meeting.

24          Q. Okay. Chris. Remind me his last name?

25          A. Lewinsky, Lewitzke.

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1 Q. Lewitzke. I'm glad he's not here because  
2 we've done terrible things to his name, and I  
3 apologize for that. My name is Vecchione. I have  
4 no excuses for this.

5 All right. I think you can put that  
6 aside.

7 (Plaintiffs' Exhibit 41 marked.)

8 BY MR. VECCHIONE:

9 Q. Let's go to Exhibit 41. And once again  
10 please tell me the headline, subject line, and the  
11 date, and then read it to yourself.

12 A. Subject, CDC COVID-19 BOLO meeting.  
13 6/10/2021.

14 Q. Okay. So let's go back -- well, the first  
15 item on here, it says "On Wednesday June 9, 2021 at  
16 4:23 PM Crawford, Carol wrote."

17 Can you read that to -- into the record?

18 A. Yes.

19 "We would like to invite digital platforms  
20 to attend our third short 'Be On The Lookout'  
21 meeting on COVID. Let us know if you have questions  
22 and feel free to forward this message to anyone in  
23 your organization that should attend."

24 Q. And did you send these out separately to  
25 all the -- withdrawn.

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1                   **You sent this particular one to Todd**  
2   **O'Boyle at Twitter; right?**

3           A. The formatting of the email is odd. But I  
4   don't believe I did that. I believe I had one  
5   appointment and I blind copied everyone, so the  
6   emails -- I think that's just because he replied, it  
7   looks like it's just him.

8           **Q. Okay. But you think when you sent these**  
9   **out you sent them out to all the social media places**  
10   **at once?**

11          A. I do. And I think when we were looking at  
12   the other exhibit I wondered the same thing, but I  
13   think that was the situation.

14          **Q. All right. That explains it for me.**

15               **And did you -- do you know if this meeting**  
16   **in June, I think it would be, ever took place?**

17          A. I don't believe it did. And this is a  
18   morning question. I'm starting to think maybe  
19   Juneteenth was a new holiday we weren't expecting  
20   that conflicted with the third BOLO meeting and  
21   maybe that is why we didn't end up having it and we  
22   sent the materials out via email.

23          **Q. All right. And who tasked you with**  
24   **sending out the BOLO messages? Why were you doing**  
25   **it?**

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1           A. Because I was the main person that was the  
2 CDC point of contact to talk to Facebook, Twitter  
3 and the platforms since our job was to lead digital  
4 media.

5           MR. VECCHIONE: Okay. You can put that  
6 aside.

7           (Plandiffs' Exhibit 42 marked.)

8 BY MR. VECCHIONE:

9           **Q. Exhibit 42.**

10           MR. VECCHIONE: And I feel that someone  
11 has added 43 in here, so I do apologize. That's a  
12 late addition.

13           MR. GILLIGAN: I thought it was Carnac  
14 time.

15           MR. VECCHIONE: No.

16 BY MR. VECCHIONE:

17           **Q. So, once again, please just name the date**  
18 **and the subject matter, and then take a look at it.**

19           A. Yeah. Subject: Booster shots, regarding  
20 booster shots. It was sent on 10/28/2021.

21           Okay.

22           **Q. All right. Do you recognize this**  
23 **document?**

24           A. Not specifically.

25           **Q. Can you describe what it is?**



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1           A. It's a conversation about some booster  
2 guidance updates that are occurring and some  
3 requests from Google to review some of the changes  
4 that they were considering on the search result  
5 pages.

6           **Q. All right. And the date is -- I think it**  
7 **starts, if you look at the last page, on**  
8 **September 30th, 2021.**

9           A. Yes.

10          **Q. And that's from Stanley Onyimba to Fred**  
11 **Smith.**

12               **Who is Fred Smith? He's new.**

13          A. He's a direct -- he reports to me. He was  
14 the technical person I mentioned who usually  
15 attended the Google meetings with me. I was out of  
16 town this date, so I wasn't on the email.

17          **Q. All right. And he -- well, I think he**  
18 **sends you the email?**

19          A. Yeah.

20          **Q. Just you're cc'd?**

21          A. Maybe. I don't believe I was in town,  
22 though --

23          **Q. Okay.**

24          A. -- when this was occurring. I don't see  
25 myself cc'd on Stanley's email to Fred.

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1           **Q. All right. Why is -- do you have any**  
2   **knowledge why is Stanley Onyimba sending this to**  
3   **Fred? What is the purpose of this?**

4           MS. SNOW: Objection. Calls for  
5   speculation.

6           A. Are you going to re-ask the question?  
7   BY MR. VECCHIONE:

8           **Q. No.**

9           A. I mean --

10          **Q. What's your understanding of why he's**  
11   **sending this --**

12          A. Yes.

13          **Q. -- to CDC?**

14          A. Well, I don't -- because the screenshots  
15   are not available that are attached or put in here,  
16   I can't directly explain this, but sometimes on  
17   those Google panels that I mentioned they would  
18   highlight specific things like, they would -- they  
19   would, you know, before the search results came up,  
20   they would highlight a link. And I think that they  
21   were considering -- considering taking some words  
22   that they saw on vaccines.gov and add it to that  
23   panel, and they wanted to be sure it was right and  
24   they were asking us.

25          **Q. All right. And then Fred responds that it**

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1 looks okay to him, but he's not the -- he's not an  
2 expert on this?

3 A. Correct.

4 Q. All right. And so -- and then Mr. Smith  
5 writes -- now, after that -- after that, you know, I  
6 don't know, I'm going to go check with some people,  
7 Mr. Smith writes back: "Hi, Stanley, I heard back  
8 from some folks. No heartburn over the messages  
9 proposed. Cheers, Fred."

10 Do you see that?

11 A. Yes.

12 Q. Did I read that correctly?

13 A. Yes.

14 Q. Do you know who "some folks" are? Who did  
15 he check with?

16 A. I don't know who he checked with.

17 Q. Okay. And then the next -- I'm having a  
18 hard time -- I can read the message. Do you know  
19 when that was sent, the next message up?

20 A. The one from Jan and Megan?

21 Q. Yeah.

22 A. It looks like October 28, 2021.

23 Q. So you go all the way up to the next -- on  
24 page 1, and then you read down?

25 A. That's what it appears, mm-hmm.

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1           **Q. All right. Why don't you take -- so can**  
2   **you -- you came back, apparently, and emailed**  
3   **Antonio [sic] -- Jan and Stanley and the folks at**  
4   **Google on October 28th at 5:11; right?**

5           **A. Yes.**

6           **Q. Okay. And you said: "This looks good,**  
7   **thanks for checking," in the middle there?**

8           **A. Mm-hmm (affirmative).**

9           **Q. The next part?**

10          **A. (As read) Yes. We can discuss the**  
11   **pediatric vaccines early next week but let me give**  
12   **you some general info: ACIP is likely to vote on**  
13   **this on November 2nd. CDC is likely to start**  
14   **posting final information on November 3rd...if that**  
15   **helps to know. There will be many updates so the**  
16   **changes might span over a few days. We are also**  
17   **looking ahead and misinformation and hope to have a**  
18   **BOLO type meeting later that week with the platforms**  
19   **that are interested.**

20          **Q. And who's ACIP?**

21          **A. The Advisory Council for Immunization**  
22   **Practices, I believe, I think that's right.**

23          **Q. And do you know whether you had a BOLO**  
24   **meeting for this?**

25          **A. I don't -- I don't believe that we ever**

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1 had one.

2 Q. So the email states that --

3 You can put that aside.

4 (Plaintiffs' Exhibit 43 marked.)

5 BY MR. VECCHIONE:

6 Q. Let's go to -- yeah, let's go to the last,  
7 43.

8 Once again for Exhibit 43 please state the  
9 subject matter line, and then the -- and who it --  
10 what the date of it is?

11 A. Subject: Claims review. 6/29/2022.

12 I have read it.

13 Q. Okay. So can you read the -- well, who is  
14 Rachel Gruner?

15 A. She is my new point of contact at Google.  
16 She replaced Jan Antonaros.

17 Q. And who's Lindsay Steele?

18 A. Lindsay Steele replaced Stanley.

19 Q. Onyimba?

20 A. "O".

21 Q. Okay. And they're both -- their emails  
22 are here in the to line; right?

23 A. Yes.

24 Q. All right. And if you could read the  
25 after Hi, Carol, Hi, Fred from Rachel, what does she

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1     **say here?**

2             A.   "The YouTube policy team is requesting  
3     evidence-based input on the claims below. In the  
4     past, the CDC has reviewed COVID information claims  
5     and commented true or false plus any additional  
6     context needed."

7             **Q. And then what are the claims?**

8             A.   (As read) Claim: High dosage of  
9     progesterone is a safe method of reversing chemical  
10    abortion, in parentheses, mifepristone and  
11    misoprostol.

12            Sorry.

13            (As read) Claim: High doses of  
14    progesterone is an effective method of reversing  
15    chemical abortion, in parentheses, mifepristone and  
16    misoprostol.

17            **Q. All right.**

18            A.   "Please let me know if you have questions  
19    or concerns."

20            **Q. And then what -- how do you respond?**

21            A.   "I'll check on this, but I think I'll  
22    probably end up needing to refer you to another  
23    agency. I'll get back to you."

24            **Q. So this -- this -- is it your**  
25    **understanding this didn't have anything to do with**

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1     **COVID-19 or vaccines?**

2             A. It definitely didn't have anything to do  
3 with COVID-19 or vaccines.

4             **Q. Do you know why it was sent to you?**

5             A. Well, as COVID's -- our focus is not  
6 solely on COVID. We're focusing on other topics. I  
7 think Rachel thought that we might be able to help  
8 with this topic as well.

9             **Q. Okay. Do you know who you sent it, what**  
10 **agency you sent it to, if any?**

11            A. I -- I didn't know. I called one of our  
12 centers and asked if this was something that CDC  
13 dealt with. I didn't think that we did, and they  
14 confirmed that we do not. And I don't think they  
15 had a suggestion on where to refer this to, but I  
16 can't recall for sure.

17            MR. VECCHIONE: All right. I would like  
18 to take a brief break and have the court reporter  
19 put my last exhibit together and give you copies  
20 and then --

21            MR. GILLIGAN: There is a 44, too?

22            MR. VECCHIONE: -- confer, confer with  
23 counsel, and I think we'll be finishing up.

24            (Comments off the record.)

25            THE VIDEOGRAPHER: Off the record at 5:07.

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1 (Recess 5:07 p.m. - 5:19 p.m.)

2 THE VIDEOGRAPHER: Back on the record at  
3 5:19.

4 (Plaintiffs' Exhibit 44 marked.)

5 BY MR. VECCHIONE:

6 Q. All right. Ms. Crawford, this is going to  
7 be Exhibit 44. And it will have -- once again, read  
8 the subject line and then tell me what the date was.

9 A. Subject: "Themes that have been removed  
10 from misinform." I am sure that was typo.  
11 3/10/2021.

12 Okay.

13 Q. All right. Let's go to the back end of  
14 the exhibit. And the first email chain is from  
15 March 10th, 2021 from you to Payton Iheme; is that  
16 correct?

17 A. Yes.

18 Q. And it says: "Themes that have been  
19 removed for misinfo." And I think we've established  
20 that's misinformation; correct?

21 A. Yes.

22 Q. And you say to her: "We mentioned this on  
23 a call last week and you said you'd be sending  
24 something as other had asked -- is that available  
25 yet by chance?"



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1                   What were you telling her? What did you  
2   **mean?**

3           A. This is what I was referencing on a  
4   previous exhibit that one of our teams that was  
5   doing those vaccine confidence reports and those  
6   research reports, they were wondering if we -- if  
7   they had info on the -- on the types of posts that  
8   were removed and the themes because they were  
9   worried that we could only see the live posts and so  
10   we wouldn't know if there was also confusion about  
11   other areas that had been removed.

12           **Q. And she --**

13           A. I feel pretty confident that that is what  
14   this is about.

15           **Q. And she responds to you. "Are you looking**  
16   **for types of COVID-19 misinfo we remove"; right?**

17           A. Yes.

18           **Q. "I think it may be worth a separate**  
19   **meeting to have some of our leads discuss the**  
20   **approach/what they are seeing and doing. Would that**  
21   **work?" That's what you said?**

22           A. Yes.

23           **Q. And what are her leads; what was your**  
24   **understanding?**

25           A. Just like I would bring people that were

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1 in charge of different areas, sometimes she would  
2 bring people that had more expertise. Payton and I  
3 did not know everything in our respective  
4 organizations, so I assume it was a lead for  
5 something, someone in this area.

6 Q. All right. And then you respond to her on  
7 March 10th at 9:24; correct?

8 A. Yes.

9 Q. "Yes." And you say "you mentioned  
10 that" -- is that White House?

11 A. Yes.

12 Q. "And HHS"?

13 A. Yes.

14 Q. "Had asked so you'd get it to us"; right?

15 A. Yes.

16 Q. "I think it is wanted as part of  
17 analysis -- so are you thinking there is no  
18 report/file to send?"

19 Is that your question to her?

20 A. Yes.

21 Q. All right. And what you say there is when  
22 White House and HHS ask Facebook for this  
23 information, they assumed that Facebook would  
24 provide it to them; correct?

25 MS. SNOW: Objection. Calls for

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1 speculation.

2 BY MR. VECCHIONE:

3 Q. You can answer.

4 A. Well, I think it was poorly worded by  
5 myself and kind of typo maybe. But what this was  
6 was I recall we asked on the meeting if they had  
7 this data, like, because we wanted it. And I think  
8 she said, Oh, we did something like this for the  
9 White House or HHS.

10 This is my memory of it.

11 Q. Okay. This is one of your weekly  
12 meetings, or a BOLO?

13 A. I think it was at a weekly meeting.

14 Q. All right. And then the next thing she  
15 says back to you is: (As read) It wasn't a report,  
16 but rather a discussion. We were setting up a  
17 meeting with White House and HHS to discuss more  
18 likely later this week or early next week. Perhaps  
19 the CDC rep could participate or HHS share out?

20 Is that what she says?

21 A. Yes.

22 Q. What does HHS share out mean? That they'd  
23 give it to you?

24 A. Yes. Oh.

25 MS. SNOW: You're good. You're good.

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1 BY MR. VECCHIONE:

2 Q. So let's clean up the record a little.

3 What is an HHS share out? Does that mean they give  
4 you whatever they are provided?

5 A. Yes.

6 Q. All right. So it was your understanding  
7 that Facebook was having the same kind of meetings  
8 you were having with them with White House and HHS?

9 A. I don't know that in relation to this  
10 email. I was assuming that. But I do think that  
11 they did have meetings with the agencies.

12 Q. And could you read what you respond to her  
13 on May 10th at 9:30 a.m.?

14 A. "Oh, I assumed it was a report. Who at  
15 HHS is in the meeting?"

16 Q. And what did she respond to you at 9:32?

17 A. (As read) Josh Peck would be the HHS rep  
18 once a meeting is confirmed based on that I see him  
19 at a previous discussions or meetings with the White  
20 House.

21 Q. Do you know who he is?

22 A. Yes.

23 Q. Who is he?

24 A. I don't know his specific title, but he, I  
25 believe, during this time was running the HHS COVID

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1 communication marketing campaign.

2 Q. All right. And did you interface with him  
3 in any of your work?

4 A. Yes.

5 Q. Would he be at these, any of your weekly  
6 meetings?

7 A. No.

8 Q. All right. Would he be at your BOLO  
9 meeting?

10 A. No.

11 Q. All right. Next at 9:36 she adds  
12 something. What does she say?

13 A. (As read) And of course we are using  
14 CrowdTangle as well to visualize the current trends  
15 as well. Lauren has been working on that and can  
16 give a refresher if needed. I know she has been  
17 sending reports as well.

18 Q. And who's Lauren?

19 A. Lauren is the one who's been -- sent those  
20 biweekly CrowdTangle reports during this time frame.

21 Q. Okay. And then you respond to her at  
22 9:43:56 seconds. What do you say?

23 A. (As read) They want to see what you guys  
24 proactively have removed that might not be in those  
25 reports. My guess is a short meeting with Lis

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1 Wilhelm on the vaccine confidence team is what is  
2 needed if Facebook is willing to do it. Doesn't  
3 seem to me like that would be -- like it should be  
4 part of the White House HHS meeting.

5 **Q. Who's Lis Wilhelm?**

6 A. She is the group that was creating those  
7 vaccine confidence reports that was wondering if  
8 they had all the data reflected in them, and what  
9 the people were worried about, or confused about.  
10 And she was thinking that if the data -- if we knew  
11 the kinds of things that were removed, it might give  
12 a fuller picture for those reports.

13 **Q. Okay. And then you discuss a time for**  
14 **another meeting, and I think it ends at -- this**  
15 **chain ends at 3:10, 9:54 a.m.: Let's plan on next**  
16 **Thursday then.**

17 Do you know whether you ever had that  
18 meeting?

19 A. I think we did.

20 **Q. And do you know what was discussed there?**

21 A. I think that the vaccine confidence team  
22 came, and I don't -- and we discussed what they  
23 might have that would give them that fuller picture.

24 **Q. You can put that aside. I have got a few**  
25 **followup questions.**

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1 A. Okay.

2 Q. At any of your -- in flagging any material  
3 for any of the social media issues, themes, facts,  
4 whatever you flag, can you say whether or not you  
5 flagged any information from the Great Barrington  
6 Declaration?

7 A. I don't know what that is.

8 Q. Okay. How about Jay Bhattacharya?  
9 Anything from him?

10 A. I don't know who that is.

11 Q. Marty Kulldorff. Anything from him?

12 A. I don't know who that is.

13 Q. Aaron Kheriaty. Anything from him?

14 A. I don't know who that is.

15 Q. Jim Hoft, or Gateway Pundit?

16 A. I don't know who that is.

17 Q. All right. And Jill Hines?

18 A. I don't know who she is.

19 Q. All right. And I think I have asked you  
20 before, but bear with me. Have you flagged anything  
21 from Governor Michael Parson?

22 A. I -- well, I may or may not have known the  
23 name of the governor. But I don't recall any  
24 specific who posted anything we flagged. That might  
25 be a better way to answer these questions.

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1 Q. Okay. And that's --

2 A. I don't remember anybody associated with  
3 the example posts that we sent.

4 Q. Okay. And that would include -- I'm doing  
5 this for the record, you understand. I understand  
6 your answer.

7 A. Yes.

8 Q. That would include Eric Schmitt, Jeff  
9 Landry and John Bel Edwards?

10 A. Yes.

11 Q. Thank you. And now, finally, on the BOLO  
12 meetings, who ran the BOLO meetings?

13 A. I ran the BOLO meetings.

14 Q. In what manner? How did you do it?

15 A. I opened up the meeting, introduced  
16 myself, gave context for why we were doing the BOLO  
17 meeting in brief. And then I believe that  
18 Christopher went through the slide decks, and I  
19 occasionally piped in on them.

20 Q. Lewitzke?

21 A. Yes.

22 Q. And so he -- these slide decks, would they  
23 be like the table you showed me or that we looked at  
24 with examples of the shedding and the microchips in  
25 the bloodstream?



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1           A. They were similar to the table, but they  
2     were more like this is a theme, and then there'd be  
3     maybe a little info about what the theme was and  
4     then maybe a couple of example posts. And then  
5     there would be a slide maybe with CDC links or  
6     information related to that theme.

7           **Q. All right.**

8           A. So it was more than just a table. It had  
9     more context to it.

10          **Q. How long did the meetings go?**

11          A. They were short. I mean, maybe they were  
12     20 minutes.

13          **Q. And what did you and Mr. -- well, first,**  
14     **what did you hope to accomplish by those meetings?**

15          A. The same thing that I've been referencing.  
16     I mean, our goal is to be sure that credible  
17     information about COVID was out there. A lot of  
18     people seek information on platforms. We thought  
19     that by giving the platform scientific information  
20     it might help in our goals to being sure that  
21     credible information could be found.

22          **Q. And unbelievable information would not be**  
23     **found; correct?**

24                 MS. SNOW: Objection, mischaracterizes  
25     testimony.

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1 BY MR. VECCHIONE:

2 Q. You can answer.

3 A. I did want the credible information to be  
4 found in advance of the uncredible information.

5 Q. You at least wanted upgraded over --

6 A. Yes.

7 Q. -- uncredible information?

8 A. Yes.

9 Q. Do you recall anything anyone at any of  
10 the social media platforms asked at any of these  
11 BOLO meetings?

12 A. They weren't able to ask questions during  
13 the BOLO meetings.

14 Q. Why was that? Tell me how it ran.

15 A. I think we talked about that this morning.  
16 They are muted because the thought was they're  
17 competitors, and they could ask questions  
18 individually later.

19 Q. Got it. One second.

20 (Mr. Vecchione conferring with Mr. Sauer.)

21 BY MR. VECCHIONE:

22 Q. Did they ask any questions individually  
23 later that you recall?

24 A. No, I don't think that they did.

25 MR. VECCHIONE: All right. I have no

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1 further questions at this time.

2 MS. SNOW: Okay. Nothing further. No  
3 questions for defense.

4 MR. VECCHIONE: And you already said  
5 you'll read, right, at the beginning?

6 MS. SNOW: I said that at the beginning,  
7 so I didn't want to forget at the end.

8 MR. VECCHIONE: All right.

9 THE VIDEOGRAPHER: Okay. I've got to ask  
10 on the record, what about video copies for  
11 everybody? Anybody?

12 MR. SAUER: We want video as soon as it's  
13 available.

14 THE VIDEOGRAPHER: So you want synced,  
15 non-synced?

16 MR. SAUER: I think synced syncs the video  
17 to the transcript?

18 THE VIDEOGRAPHER: Yes, I believe so.

19 MR. VECCHIONE: And we -- I think what  
20 we've been doing, we're going to do is give the  
21 originals to her to put the record together, the  
22 transcript together, the original exhibits.

23 MR. GILLIGAN: The original exhibits, yes.

24 MR. SAUER: So there should be -- that  
25 stack of exhibits should go to the court reporter in

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1 front of the witness.

2 THE VIDEOGRAPHER: Do you want a copy also  
3 for your group?

4 MR. SAUER: No, just one. We're both  
5 plaintiffs.

6 MR. VECCHIONE: And there is no Exhibit.  
7 25 that's the one we skipped. So don't be thinking  
8 it's lost.

9 MS. SNOW: But, yeah, we would like a copy  
10 of the video as well.

11 THE VIDEOGRAPHER: Okay. A synced copy?

12 MS. SNOW: Yes.

13 THE VIDEOGRAPHER: So how about you, sir?

14 MR. GILLIGAN: She's with us.

15 THE VIDEOGRAPHER: So just one for each.

16 MS. SNOW: Yeah.

17 THE VIDEOGRAPHER: Got you. Thank you.

18 And we are off the record at 5:33.

19 (Concluded at 5:33 p.m.)

20 (Signature reserved.)

21

22

23

24

25

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C E R T I F I C A T E

STATE OF GEORGIA:

DEKALB COUNTY:

I, Maureen S. Kreimer, a Certified Court Reporter for the State of Georgia, before whom the foregoing deposition was taken, do hereby certify:

That CAROL CRAWFORD, the witness whose deposition is hereinbefore set forth in pages 1 to 269, was duly sworn by me and that such deposition is a true record of the testimony given by the witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of November, 2022.



MAUREEN S. KREIMER, CCR-B-1379

Notary Public in and for the  
State of Georgia. My Commission  
Expires August 14, 2024.

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LEXITAS LEGAL

November 17, 2022

KYLA SNOW, ESQ.  
U.S. Department of Justice  
1100 L Street N.W.  
Washington, DC 29530

IN RE: STATE OF MISSOURI ex rel. ERIC S. SCHMITT,  
Attorney General, et al. v. JOSEPH R.  
BIDEN, JR., in his official capacity as  
President of the United States, et al.

Dear Ms. Snow:

Please find enclosed your copies of the deposition of  
CAROL CRAWFORD taken on November 15, 2022 in the  
above-referenced case. Also enclosed is the original  
signature page and errata sheets.

Please have the witness read your copy of the  
transcript, indicate any changes and/or corrections  
desired on the errata sheets, and sign the signature  
page before a notary public.

Please return the errata sheets and notarized  
signature page within 30 days to our office at 711 N  
11th Street, St. Louis, MO 63101 for filing.

Sincerely,

Lexitas Legal

Enclosures

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1 ERRATA SHEET  
2 Witness Name: CAROL CRAWFORD  
3 Case Name: STATE OF MISSOURI ex rel. ERIC S. SCHMITT,  
4 Attorney General, et al. v. JOSEPH R.  
5 BIDEN, JR., in his official capacity as  
6 President of the United States, et al.  
7 Date Taken: NOVEMBER 15, 2022  
8  
9 Page #\_\_\_\_\_ Line #\_\_\_\_\_  
10 Should read: \_\_\_\_\_  
11 Reason for change: \_\_\_\_\_  
12  
13 Page #\_\_\_\_\_ Line #\_\_\_\_\_  
14 Should read: \_\_\_\_\_  
15 Reason for change: \_\_\_\_\_  
16  
17 Page #\_\_\_\_\_ Line #\_\_\_\_\_  
18 Should read: \_\_\_\_\_  
19 Reason for change: \_\_\_\_\_  
20  
21 Page #\_\_\_\_\_ Line #\_\_\_\_\_  
22 Should read: \_\_\_\_\_  
23 Reason for change: \_\_\_\_\_  
24  
25 Witness Signature: \_\_\_\_\_

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1 STATE OF \_\_\_\_\_)

2

3 COUNTY OF \_\_\_\_\_)

4

5 I, CAROL CRAWFORD, do hereby certify:

6 That I have read the foregoing deposition;

7 That I have made such changes in form

8 and/or substance to the within deposition as might

9 be necessary to render the same true and correct;

10 That having made such changes thereon, I

11 hereby subscribe my name to the deposition.

12 I declare under penalty of perjury that the

13 foregoing is true and correct.

14 Executed this \_\_\_\_\_ day of \_\_\_\_\_,

15 20\_\_\_\_, at \_\_\_\_\_.

16

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18

19

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CAROL CRAWFORD

21

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23

NOTARY PUBLIC

24 My Commission Expires:

25



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# EXHIBIT C

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When you use YouTube, you join a community of people from all over the world. The guidelines below help keep YouTube fun and enjoyable for everyone.

If you see content that you think violates these guidelines, [report it](#).

These policies apply to all types of content on our platform, including, for example, unlisted and private content, comments, [links](#), Community posts, and thumbnails. This list isn't complete.

### Spam & deceptive practices



The YouTube Community is one that's built on trust. Content that intends to scam, mislead, spam, or defraud other users isn't allowed on YouTube.

- [Spam, deceptive practices, & scams policies](#)
- [Impersonation policy](#)
- [External links policy](#)
- [Fake engagement policy](#)
- [Playlists policy](#)
- [Additional policies](#)

### Sensitive content



We hope to protect viewers, creators, and especially minors. That's why we've got rules around keeping children safe, sex & nudity, and self harm. Learn what's allowed on YouTube and what to do if you see content that doesn't follow these policies.

- [Nudity & sexual content policies](#)
- [Thumbnails policy](#)
- [Child safety policy](#)
- [Suicide, self-harm, and eating disorders policy](#)
- [Vulgar language policy](#)

### Violent or dangerous content



Hate speech, predatory behavior, graphic violence, malicious attacks, and content that promotes harmful or dangerous behavior isn't allowed on YouTube.

- [Harmful or dangerous content policies](#)
- [Violent or graphic content policies](#)
- [Violent criminal organizations policy](#)
- [Hate speech policy](#)
- [Harassment & cyberbullying policies](#)



### Regulated goods

Certain goods can't be sold on YouTube. Find out what's allowed—and what isn't.

- [Sale of illegal or regulated goods or services policies](#)
- [Firearms policy](#)

## Misinformation



Certain types of misleading or deceptive content with serious risk of egregious harm are not allowed on YouTube. This includes certain types of misinformation that can cause real-world harm, like promoting harmful remedies or treatments, certain types of technically manipulated content, or content interfering with democratic processes.

- [Misinformation policies](#)
- [Elections misinformation policies](#)
- [COVID-19 medical misinformation policies](#)
- [Vaccine misinformation policy](#)



Get creator tips for [YouTube policies and guidelines](#).

***Please take these rules seriously.*** If a YouTube creator's on- and/or off-platform behavior harms our users, community, employees or ecosystem, we may respond based on a number of factors including, but not limited to, the egregiousness of their actions and whether a pattern of harmful behavior exists. Our response will range from suspending a creator's privileges to account termination.

---



# EXHIBIT D

[Our commitments](#) ▼[Product features](#) ▼[User settings](#) ▼[Rules and policies](#)

## OUR COMMITMENTS

# How does YouTube address misinformation?

With billions of people visiting us every day - whether they're looking to be informed, to catch up on the latest news, or to learn more about the topics they care about, we have a responsibility to connect people to high-quality content. So the most important thing we can do is increase the good and decrease the bad. That's why we address misinformation on our platform based on our "4 Rs" principles: we remove content that violates our policies, reduce recommendations of borderline content, raise up authoritative sources for news and information, and reward trusted creators. [Learn more about how we treat misinformation on YouTube.](#)



[Our commitments](#) ▼[Product features](#) ▼[User settings](#) ▼[Rules and policies](#)

As detailed in our [Community Guidelines](#), YouTube does not allow misleading or deceptive content that poses a serious risk of egregious harm. When it comes to misinformation, we need a clear set of facts to base our policies on. For example, for COVID-19 medical misinformation policies, we rely on expert consensus from both international health organizations and local health authorities.

Our policies are developed in partnership with a wide range of external experts as well as YouTube Creators. We enforce our policies consistently using a [combination of content reviewers and machine learning](#) to remove content that violates our policies as quickly as possible.

## Related articles

### Supporting political integrity

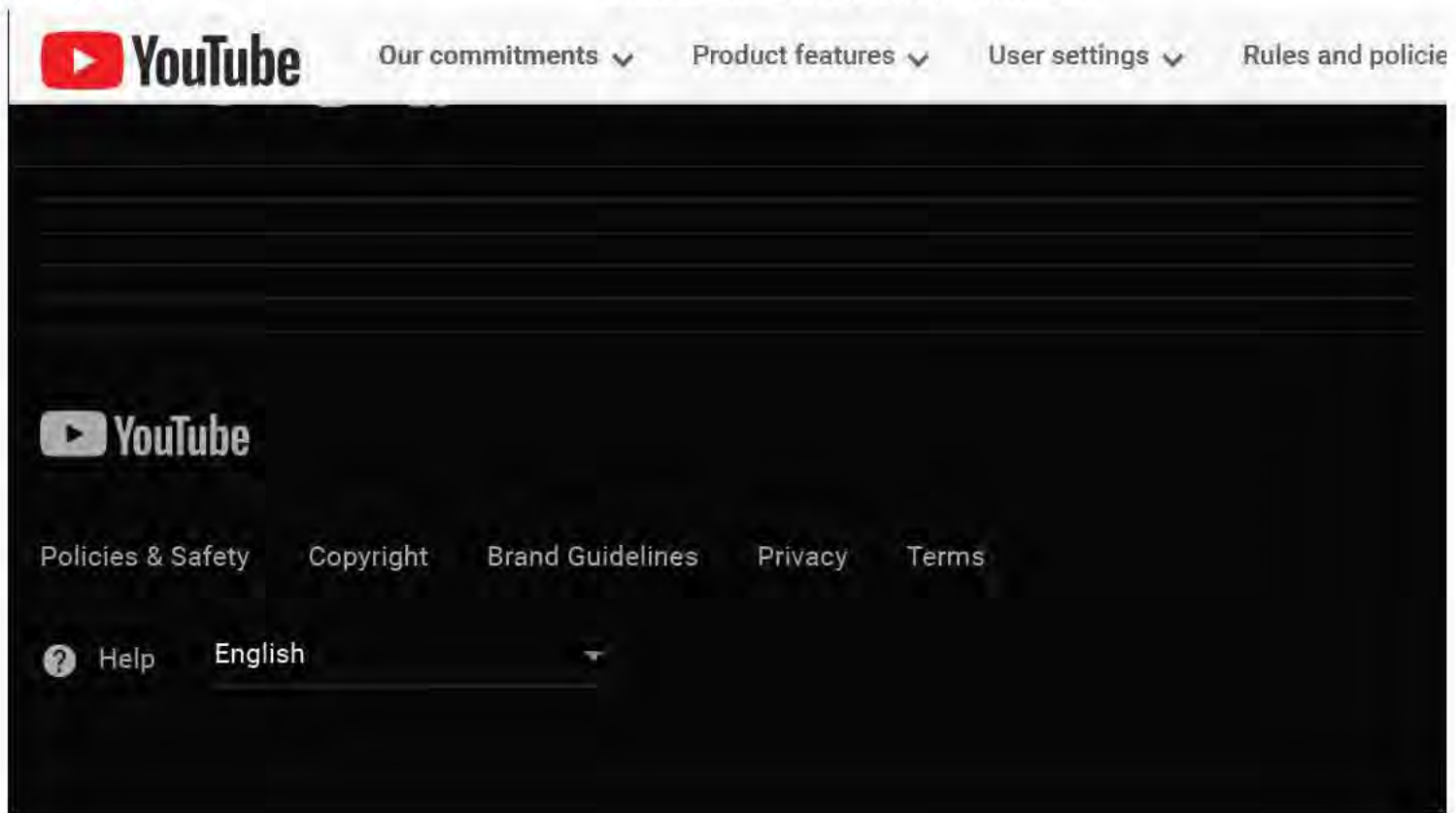
[READ MORE](#)

### Community Guidelines

[READ MORE](#)

### News and information

[READ MORE](#)



# EXHIBIT E

# Medical misinformation policy

YouTube doesn't allow content that poses a serious risk of egregious harm by spreading medical misinformation that contradicts local health authorities' (LHAs) or the World Health Organization's (WHO) guidance about specific health conditions and substances. This policy includes the following categories:

- Prevention misinformation
- Treatment misinformation
- Denial misinformation

**Note:** YouTube's medical misinformation policies are subject to change in response to changes to guidance from health authorities or WHO. There may be a delay between new LHAs/WHO guidance and policy updates, and our policies may not cover all LHA/WHO guidance related to specific health conditions and substances.

## What this policy means for you

Don't post content on YouTube if it includes any of the following:

**Prevention misinformation:** We do not allow content that promotes information that contradicts health authority guidance on the prevention or transmission of specific health conditions, or on the safety, efficacy or ingredients of currently approved and administered vaccines.

**Treatment misinformation:** We do not allow content that promotes information that contradicts health authority guidance on treatments for specific health conditions, including promotion of specific harmful substances or practices that have not been approved by local health authorities or the World Health Organization as safe or effective, or that have been confirmed to cause severe harm.

**Denial misinformation:** We do not allow content that denies the existence of specific health conditions.

These policies apply to videos, video descriptions, comments, live streams, and any other YouTube product or feature. Keep in mind that this isn't a complete list. Please note these policies also apply to [external links](#) in your content. This can include clickable URLs, verbally directing users to other sites in video, as well as other forms.

## Examples

Here are some examples of content that's not allowed on YouTube. This isn't a complete list.

### Prevention misinformation

|  |   |
|--|---|
| <a href="#">Harmful substances &amp; practices as prevention methods</a> | ▼ |
| <a href="#">Guaranteed prevention misinformation</a>                     | ▼ |
| <a href="#">Vaccine misinformation</a>                                   | ▼ |
| <a href="#">Transmission information</a>                                 | ▼ |

### Treatment misinformation

|   |   |
|---|---|
| <a href="#">Harmful substances &amp; practices as treatment methods</a> | ▼ |
| <a href="#">Guaranteed treatment misinformation</a>                     | ▼ |

## Harmful alternative methods & discouragement of professional treatment



### Denial misinformation

- Content that denies the existence of COVID-19 or that people have died from COVID-19.
  - Examples:
    - Denial that COVID-19 exists
    - Claims that people have not died or gotten sick from COVID-19
    - Claims that there have not been cases or deaths in countries where cases or deaths have been confirmed by local health authorities or the WHO

### Educational, documentary, scientific or artistic content

We may allow content that violates the misinformation policies noted on this page if that content includes additional context in the video, audio, title, or description. This is not a pass to promote misinformation. Additional context may include countervailing views from local health authorities or medical experts. We may also make exceptions if the purpose of the content is to condemn, dispute, or satirize misinformation that violates our policies. We may also make exceptions for content discussing the results of a specific medical study, or showing an open public forum, like a protest or public hearing, provided the content does not aim to promote misinformation that violates our policies.

YouTube also believes people should be able to share their own experiences, including personal experiences with vaccinations, for example. This means we may make exceptions for content in which creators describe firsthand experiences from themselves or their family. At the same time, we recognize there is a difference between sharing personal experiences and promoting misinformation. To address this balance, we will still remove content or channels if they include other policy violations or demonstrate a pattern of promoting medical misinformation.

### What happens if content violates this policy

If your content violates this policy, we'll remove the content and send you an email to let you know. If we can't verify that a link you post is safe, we may remove the link.

If this is your first time violating our Community Guidelines, you'll likely get a warning with no penalty to your channel. If it's not, we may issue a strike against your channel. If you get 3 strikes within 90 days, your channel will be terminated. You can learn more about [our strikes system here](#).

We may terminate your channel or account for repeated violations of the Community Guidelines or Terms of Service. We may also terminate your channel or account after a single case of severe abuse, or when the channel is dedicated to a policy violation. You can learn more about [channel or account terminations here](#).

#### Need more help?

Try these next steps:



Post to the help community

Get answers from community members

# EXHIBIT F



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Attorneys for Plaintiff,  
ROBERT F. KENNEDY, JR.

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

ROBERT F. KENNEDY, JR.,  
  
Plaintiff,  
  
vs.  
  
GOOGLE LLC, a Delaware  
corporation, and YOUTUBE, LLC, a  
Delaware corporation,  
  
Defendants.

Case No.

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

**JURY TRIAL DEMAND**

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Plaintiff Robert F. Kennedy, Jr., alleges as follows:

## **INTRODUCTION**

1. This complaint concerns the freedom of speech and the extraordinary steps the United States government has taken under the leadership of Joe Biden to silence people it does not want Americans to hear.

2. Mr. Kennedy is not the only victim of this censorship campaign, which is unprecedented in American history. But he is a high-profile victim, especially since he is now challenging President Biden for the Democratic Party's presidential nomination.

3. Mr. Kennedy often speaks at length about topics people would like to ignore, including the negative health effects of toxic chemicals and potential safety concerns about the COVID-19 shots (as well as other vaccines that have been developed since Congress gave the pharmaceutical industry immunity from product liability claims).

4. YouTube often removes videos of Mr. Kennedy's comments from its public platform. It usually relies on its "medical misinformation" policies to justify the action. It has relied on the policies several times to censor interviews and speeches given by Mr. Kennedy during the 2024 presidential campaign, including a speech he gave at Saint Anselm College in New Hampshire, the state that hosts America's first primary. On information and belief, it did so based on statements from the Biden Administration about what information to censor. It will continue to do so throughout the presidential campaign, especially as the primary elections get closer.

5. These actions are unlawful. The U.S. Supreme Court has said that "the right to think is the beginning of freedom" and that "speech must be protected from the government because speech is the beginning of thought." Those principles apply both when the government directly regulates speech and when, as here, it works behind the scenes to censor its critics through otherwise private actors. Plaintiffs bring

1 this action to protect those principles and to preserve their ability to communicate with  
2 Americans on matters of public concern.

### 3 **PARTIES, JURISDICTION AND VENUE**

4 6. Mr. Kennedy resides in New York.

5 7. Defendant Google LLC is a limited liability company formed under  
6 Delaware law that has its corporate headquarters in Mountain View, California.

7 8. Defendant YouTube, LLC, is a limited liability company formed under  
8 Delaware law that has its corporate headquarters in San Bruno, California.

9 9. YouTube, LLC, is a wholly owned subsidiary of Google LLC, which  
10 Google acquired in 2006. On information and belief, Google LLC has complete  
11 ownership and control over YouTube's operations. At minimum, Google LLC acts in  
12 concert with YouTube, LLC, in running YouTube's business, particularly as it relates  
13 to the unlawful actions alleged in this Complaint. Thus, Google LLC and YouTube,  
14 LLC, are proper defendants in this case and are referred to interchangeably as  
15 "Google" and "YouTube."

16 10. The Court has jurisdiction over this case under 42 U.S.C. § 1983 and 28  
17 U.S.C. § 1331, given the federal questions it raises. Venue is proper under 28 U.S.C. §  
18 1391(b)(1).

### 19 **FACTUAL ALLEGATIONS**

20 11. YouTube was started in 2005 by former PayPal executives who thought  
21 people would enjoy having a place to share their own videos. It was an instant  
22 success, so successful, in fact, that Google abandoned its own nascent video service  
23 and instead purchased YouTube for \$1.65 billion less than a year after it launched.  
24 Since then, YouTube has become one of the most visited websites in the world and  
25 YouTube is one of the world's most valuable media companies, with annual revenue  
26 that dwarfs the money earned by television networks.

27 12. This success has made YouTube a popular place to generate and view  
28

1 new content, particularly content related to public affairs. For example, in March  
2 2016, YouTube announced that, between April 2015 and March 2016, viewers had  
3 consumed roughly 110 million hours of election-related content on YouTube, much of  
4 which was viewed on mobile devices. Kate Stanford, the director of YouTube's  
5 advertiser marketing at the time, made much of that, saying: "Voter decisions used to  
6 be made in living rooms, in front of televisions. Today, they're increasingly made in  
7 micro-moments, on mobile devices."

8 13. Political candidates seized on this development, spending millions of  
9 dollars in advertising and original content on YouTube during the 2016 presidential  
10 election. That continued in 2020 and it will only increase during the 2024 campaign,  
11 especially as more political commentators (Meghyn Kelly and Tucker Carlson, for  
12 example) leave network and cable television to broadcast directly to Americans  
13 through the Internet and social media platforms.

14 14. Thus, YouTube has become an important platform for political discourse  
15 in America, a digital town square that voters trust as a place to get news and opinions  
16 about the issues of the day, a place where people can communicate about matters of  
17 public concern.

18 15. Mr. Kennedy is a lawyer, a son of former Attorney General Robert F.  
19 Kennedy and a nephew of former President John F. Kennedy.

20 16. Mr. Kennedy is seeking the Democratic Party's nomination for president.  
21 He has filed the necessary paperwork with the Federal Election Commission and is  
22 taking steps to qualify for the ballot in the early primary states, including New  
23 Hampshire. He declared his candidacy on April 19, 2023.

24 17. Before announcing his campaign, Mr. Kennedy took a strong stance  
25 against the Democratic National Committee's effort to strip New Hampshire of its  
26 "First in the Nation" primary. He accepted an invitation to speak about that and other  
27 issues at Saint Anselm College in March. His speech, which was viewed as a political  
28

1 speech and attended by several prominent New Hampshire Democrats including the  
2 chairman of New Hampshire’s Democratic Party, lasted nearly two hours. It centered  
3 on Mr. Kennedy’s concerns about the corrupt merger of corporate and state power, an  
4 issue he has fought about for years and which, in recent years, caused him to question  
5 the increasing numbers of vaccines American children must take.

6 18. Mr. Kennedy’s criticism and questioning of the pharmaceutical industry  
7 over vaccines has been deemed controversial by some people, including government  
8 officials whose funding depends on the pharmaceutical industry. But he spoke  
9 intelligently about his views for years, free of censorship, and with people like the  
10 former Comedy Central host Jon Stewart who disagree with him, reflecting the  
11 principle, fundamental to American democracy, that more speech is better than less  
12 speech, especially when it comes to political speech.

13 19. That fundamental principle is under attack. It seems to have started after  
14 Big Tech companies like Google, Facebook and Twitter blamed themselves for the  
15 election of Donald Trump as president in 2016. Moreover, in 2018, Congress passed,  
16 and the president signed into law, the Cybersecurity and Infrastructure Security  
17 Agency Act of 2018. This law created a new agency, the Cybersecurity and  
18 Infrastructure Security Agency (“CISA”), within the Department of Homeland  
19 Security to protect America from cyber threats. According to CISA, its mission  
20 “requires effective coordination and collaboration among a broad spectrum of  
21 government and private sector organizations.” These organizations include YouTube  
22 and CISA’s mission apparently includes removing speech about issues of public  
23 concern that the federal government deems dangerous.

24 20. The coordination and collaboration between YouTube and the federal  
25 government included developing misinformation policies like the one YouTube has  
26 used, and will continue to use, to censor statements that Mr. Kennedy makes in the  
27 2024 presidential campaign. For example, YouTube removed video of Mr. Kennedy’s  
28

1 March 2023 speech at Saint Anselm’s New Hampshire Institute of Politics that had  
2 been posted on the platform by Manchester Public Television. The station’s director  
3 said: “YouTube will not allow us to post the video because of controversial  
4 vaccination content. MPTS has recorded more than 100 wonderful NHIOP events, and  
5 I cannot recall this happening before.”

6 21. YouTube doubled down on the decision, saying that it “removed the  
7 [Kennedy speech] for violating our policies on COVID-19 vaccine misinformation ....  
8 While we do allow content with educational, documentary, scientific or artistic  
9 context, such as news reports, the content we removed from this channel was raw  
10 footage and did not provide sufficient context.” A true and correct copy of YouTube’s  
11 “COVID-19 medical misinformation” policy is attached as **Exhibit “A.”** A true and  
12 correct copy of its “vaccine misinformation” policy is attached as **Exhibit “B.”** These  
13 policies are referred to collectively as YouTube’s medical misinformation policies.

14 22. Of course, only a portion of Mr. Kennedy’s Manchester speech dealt with  
15 his views about vaccines or COVID-19. Much of the speech focused on the DNC’s  
16 attempt to strip New Hampshire of its slot in the primary calendar, as well as  
17 Kennedy’s history of environmental activism, including his successful efforts to clean  
18 up the Hudson River. YouTube removed everything.

19 23. This was not an isolated incident. Since Mr. Kennedy declared his  
20 candidacy, YouTube has removed other videos of him speaking, including interviews  
21 he did with Jordan Peterson and Joe Rogan. Again, although YouTube has cited its  
22 medical misinformation policies to justify these decisions, it has removed the entire  
23 video of Mr. Kennedy speaking.

24 24. This trend will continue throughout the 2024 campaign. Unlike other tech  
25 companies—notably Facebook and Instagram (both owned by Facebook parent Meta)  
26 and Twitter (now owned by Elon Musk)—YouTube has not treated Mr. Kennedy  
27 differently now that he is a political candidate. If anything, Mr. Kennedy’s candidacy,  
28

1 and the issues of public concern he speaks about, have made him an even bigger target  
2 for the public/private censorship regime that Google and YouTube are an integral part  
3 of.

4 25. This censorship campaign prevents Mr. Kennedy's message from  
5 reaching millions of voters. It also makes it harder for groups that are supporting his  
6 campaign to amplify his message through public sources.

7 26. The decisions to censor Mr. Kennedy on these matters of public concern  
8 were not made by YouTube, acting of its own accord, but as part of the partnership  
9 between YouTube and federal government officials, including the Biden White  
10 House, to censor dissenting views that started during the COVID-19 pandemic. As  
11 documents discovered by two state attorneys general show, federal officials, including  
12 White House officials Rob Flaherty and Clarke Humphrey, were the ones who  
13 directed tech companies to remove statements Mr. Kennedy made about the  
14 government's COVID policies. For example, a true and correct copy of an email  
15 showing Ms. Humphrey's demand that one tech company, Twitter, remove one of Mr.  
16 Kennedy's posts on January 22, 2021, is attached as **Exhibit "C."**

17 27. Although this email targeted Twitter, White House and other government  
18 officials repeatedly worked with the big tech companies, including YouTube, to  
19 censor Mr. Kennedy during 2021 and 2022. Indeed, by July 2021, the White House  
20 press secretary was calling on the tech platforms to ban Mr. Kennedy completely and,  
21 on information and belief, YouTube was working behind the scenes with CISA and  
22 other government officials to do just that. It is reasonable to believe that this  
23 partnership, and the related White House pressure campaign, increased after Mr.  
24 Kennedy challenged President Biden for the Democratic Party's nomination.

25 28. YouTube plays an especially important role in this public/private  
26 censorship regime. Whether it is through advertising, interviews, or raw footage,  
27 YouTube provides people—especially political candidates—with unfettered access to  
28



1 the American public. YouTube is not simply a tool of communication, like a  
2 telephone or a social media app. It is not simply a publisher like *The New York Times*  
3 or *The Wall Street Journal*. It is a place for people to view, to listen, and to learn about  
4 whatever they want. For the most part, they can do that without registering and  
5 without paying anything.<sup>1</sup> They can simply log onto the platform and watch. Thus,  
6 YouTube is the digital equivalent of the town square. It is a platform for speech. And  
7 YouTube has monetized that role, earning billions of dollars for Google in the  
8 process.

9         29. With that reach comes responsibility, though. YouTube may own its  
10 website. In that sense, youtube.com is private property. But, by allowing the public to  
11 post videos there, YouTube turned youtube.com into a public forum of some sort.  
12 Whether it is a traditional public forum, a limited public forum or something else does  
13 not matter. It cannot exclude people from the platform based on their viewpoint. It  
14 cannot decide which speech people hear. It cannot do that itself and it especially  
15 cannot do that, as it has with Plaintiffs, based on a public/private partnership in which  
16 YouTube relies on the government to decide what information to censor.

17         30. The Ninth Circuit Court of Appeals has historically construed the state  
18 action doctrine liberally, echoing Justice William Brennan's view that, "[i]f the  
19 Fourteenth Amendment is to have its intended effect as a restraint on the abuse of  
20 state power, courts must be sensitive to the manner in which state power is exercised.  
21 In an era of active government intervention to remedy social ills, the true character of  
22 the State's involvement in, and coercive influence over, the activities of private  
23 parties, often through complex and opaque regulatory frameworks, may not always be  
24 apparent. But if the task that the Fourteenth Amendment assigns to the courts is thus  
25 rendered more burdensome, the courts' obligation to perform that task faithfully, and  
26

27 <sup>1</sup> There are also private areas of YouTube, but the speech Google censored that is at  
28 issue in this case was available to anybody.



consistently with the constitutional purpose, is rendered more, not less, important.”

31. Those words echo today. This will be the last presidential election before America’s 250th birthday. Much has changed since 1776. The country’s demand for freedom of speech—especially political speech—should not be one of them.

### **FIRST CLAIM FOR RELIEF**

#### **(Injunctive Relief under 42 U.S.C. § 1983/State Action Doctrine)**

32. Mr. Kennedy incorporates paragraphs 1 through 29 of this Complaint as though set forth fully herein.

33. When Mr. Kennedy speaks about the federal government’s COVID-19 policies, as he has in the Manchester speech and in interviews on the campaign trail, he is engaging in speech on matters of public concern that are protected by the First Amendment.

34. Although YouTube is a private (non-governmental) party, it violated Mr. Kennedy’s First Amendment rights when it removed videos of his political speech, as alleged above, in several ways.

35. *First*, there is a sufficiently close nexus between YouTube and the federal government such that YouTube’s actions may be fairly treated as that of government itself. For example, although it cited its own COVID vaccine misinformation policies when censoring Mr. Kennedy, the policies rely entirely on government officials to decide what information gets censored. They say that YouTube does not allow people to say anything “that contradicts local health authorities’ (LHA) or the World Health Organization’s (WHO) medical information about COVID-19.” These policies are subject to change, but only “in response to changes to global or local health authorities’ guidance on the virus.” In other words, the government provides the rules that guide YouTube’s enforcement of the medical misinformation policies.

36. *Second*, YouTube’s medical misinformation policies were developed as part of a joint enterprise between YouTube and federal government officials to

1 prevent Americans from hearing people like Mr. Kennedy who disagreed with the  
2 government’s policy decisions. YouTube had no obligation to act as the government’s  
3 censor. But, after the creation of CISA and especially after President Biden took  
4 office, YouTube decided to partner with the federal government to censor dissenting  
5 voices about COVID-19. In this way, the federal government insinuated itself into  
6 such a position of interdependence with YouTube that they can be deemed joint  
7 participants in the censorship regime. This partnership consists of a complex and  
8 deeply intertwined process between the federal government and YouTube—but led by  
9 the government, which plays an outsized role in the decision—about what information  
10 is “dangerous” and which speakers (especially Mr. Kennedy) need to be silenced.

11 37. Again, these are not conclusory allegations but facts that have been  
12 revealed in other litigation against Big Tech platforms, including emails from early  
13 2021 in which Biden White House officials discussed alleged vaccine misinformation  
14 and “ways the White House (and our COVID experts) can partner [with the tech  
15 companies] in product work.” A true and correct copy of one such email is attached as  
16 **Exhibit “D.”** This partnership has targeted Mr. Kennedy from day one of the Biden  
17 Administration but, on information and belief, it has increased since Kennedy  
18 challenged the president politically.

19 38. When engaging in this partnership, YouTube did not act in good faith, to  
20 promote its own business, but to fulfill the government’s objective of preventing  
21 people from hearing Kennedy’s comments. It was fulfilling the government’s  
22 censorship goals. It will continue to do that. Indeed, YouTube is the only one of the  
23 Big Tech platforms that is still censoring Mr. Kennedy during his political campaign.

24 39. *Third*, the federal government has ensured that YouTube cooperate in its  
25 censorship campaign by publicly demanding that it do so, by accusing it of killing  
26 people when it does not cooperate, and by threatening to take away certain legal  
27 protections that YouTube has under federal law (namely immunity under section 230  
28

of the Communications Decency Act). Indeed, YouTube bases its right to censor people on section 230. Thus, a federal law—section 230—is the very source of authority through which tech censorship occurs, a situation in which the Supreme Court has found state action to exist.

40. Through this public and private pressure, the federal government has offered such significant encouragement, both overt and covert, that YouTube’s decision to censor Mr. Kennedy’s political speech must be deemed to have been made by the government itself, including Kennedy’s political opponent, President Biden. Under these circumstances, YouTube is a state actor and it violated Mr. Kennedy’s First Amendment rights by engaging in viewpoint discrimination, as alleged above.

41. In addition, at least with respect to the fully public aspects of its platform, YouTube operates as a public forum, the digital equivalent of a town square. As such, it cannot remove protected speech, especially political speech, based on its viewpoint. Furthermore, any viewpoint-neutral rules must be narrowly tailored to leave open ample alternative channels for communication. YouTube admittedly does not comply with these rules.

42. YouTube’s medical misinformation policies also violate the First Amendment on their face because they are overbroad and vague. Indeed, the policies give YouTube and its government partners unfettered discretion to decide what information they censor, including when they say the speech lacks “context.” Thus, the policies violate both the overbreadth and void-for-vagueness doctrines.

43. Unlike other technology companies, YouTube has refused to remove its misinformation policies and has refused to stop censoring Mr. Kennedy during his political campaign. Thus, there is a substantial likelihood that it will continue censoring Mr. Kennedy, preventing his political message from reaching millions of American voters.

44. Mr. Kennedy will be irreparably harmed if the Court does not grant

1 injunctive relief prohibiting YouTube from censoring him during his political  
2 campaign. He brings this action to seek such relief and to prohibit YouTube from  
3 enforcing its unconstitutional medical misinformation policies against him while he is  
4 seeking political office.

## 5 **SECOND CLAIM FOR RELIEF**

### 6 **(Declaratory Judgment under 28 U.S.C. § 2201)**

7 45. Mr. Kennedy incorporates paragraphs 1 through 29 of this Complaint as  
8 though set forth fully herein.

9 46. Mr. Kennedy contends that YouTube's medical misinformation policies  
10 are unconstitutional on their face and as applied to him during his presidential  
11 campaign because they are impermissibly vague and overbroad and because they give  
12 unnamed government officials, who the policies depend entirely on, the unfettered  
13 discretion to decide what information gets removed from YouTube.

14 47. On information and belief, Defendants contend that YouTube's medical  
15 misinformation policies are constitutional on their face and as applied to Mr.  
16 Kennedy.

17 48. Mr. Kennedy desires a judicial declaration that YouTube's medical  
18 misinformation policies are unconstitutional on their face for the reasons alleged  
19 above.

20 49. Under 28 U.S.C. § 2201, a judicial determination of these issues is  
21 necessary and appropriate because such a declaration will clarify the parties' rights  
22 and obligations, permit them to have certainty regarding those rights and potential  
23 liability, and avoid a multiplicity of actions.

## 24 **PRAYER FOR RELIEF**

25 Wherefore, Mr. Kennedy prays for relief as follows.

26 1. For an order declaring that Defendants violated Mr. Kennedy's rights under  
27 the First Amendment when they used information from, and partnered with, federal  
28

1 government officials, including those who work for Mr. Kennedy's political opponent,  
2 to censor his political speech.

3 2. For an order requiring that YouTube restore any videos of Mr. Kennedy's  
4 political speech that it has removed during the 2024 presidential campaign.

5 3. For an order declaring YouTube's medical misinformation policies to be  
6 unconstitutional on their face, and as applied to Mr. Kennedy during his presidential  
7 campaign, and for an injunction prohibiting Defendants from further enforcing them.

8 4. For costs and legal fees under 42 U.S.C. § 1988.

9 5. For such other relief as the Court deems proper.

10  
11 DATED: August 2, 2023

JW HOWARD/ATTORNEYS, LTD.

12  
13  
14 By: 

15 John W. Howard

16 Scott J. Street

17 Andrew G. Nagurney

18 Attorneys for Plaintiff


19 ROBERT F. KENNEDY, JR.

**JURY TRIAL DEMAND**

Mr. Kennedy requests a trial by jury on all claims for which it is available.

DATED: August 2, 2023

JW HOWARD/ATTORNEYS, LTD.

By:   
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## **EXHIBIT A**

## COVID-19 medical misinformation policy

The safety of our creators, viewers, and partners is our highest priority. We look to each of you to help us protect this unique and vibrant community. It's important you understand our Community Guidelines, and the role they play in our shared responsibility to keep YouTube safe. **Take the time to carefully read the policy below.** You can also check out [this page](#) for a full list of our guidelines.

YouTube doesn't allow content about COVID-19 that poses a serious risk of egregious harm.

YouTube doesn't allow content that spreads medical misinformation that contradicts local health authorities' (LHA) or the World Health Organization's (WHO) medical information about COVID-19. This is limited to content that contradicts WHO or local health authorities' guidance on:

- Treatment
- Prevention
- Diagnosis
- Transmission
- The existence of COVID-19

**Note:** YouTube's policies on COVID-19 are subject to change in response to changes to global or local health authorities' guidance on the virus. There may be a delay between new LHA/WHO guidance and policy updates given the frequency with which this guidance changes, and our policies may not cover all LHA/WHO guidance related to COVID-19.

Our COVID-19 policies were first published on May 20, 2020.

## What this policy means for you

### If you're posting content

Don't post content on YouTube if it includes any of the following:

#### Treatment misinformation:

- Content that encourages the use of home remedies, prayer, or rituals in place of medical treatment such as consulting a doctor or going to the hospital
- Content that claims that there's a guaranteed cure for COVID-19
- Content that recommends use of Ivermectin or Hydroxychloroquine for the treatment of COVID-19
- Claims that Hydroxychloroquine is an effective treatment for COVID-19
- Categorical claims that Ivermectin is an effective treatment for COVID-19
- Claims that Ivermectin and Hydroxychloroquine are safe to use in the prevention of COVID-19
- Other content that discourages people from consulting a medical professional or seeking medical advice

**Prevention misinformation:** Content that promotes prevention methods that contradict local health authorities or WHO.

- Claims that there is a guaranteed prevention method for COVID-19
  - Claims that any medication or vaccination is a guaranteed prevention method for COVID-19
- Content that recommends use of Ivermectin or Hydroxychloroquine for the prevention of COVID-19
- Claims that Ivermectin and Hydroxychloroquine are safe to use in the prevention of COVID-19
- Claims about COVID-19 vaccinations that contradict expert consensus from local health authorities or WHO



- Claims that an approved COVID-19 vaccine will cause death, infertility, miscarriage, autism, or contraction of other infectious diseases
- Claims that an approved COVID-19 vaccine will contain substances that are not on the vaccine ingredient list, such as biological matter from fetuses (e.g. fetal tissue, fetal cell lines) or animal products
- Claims that an approved COVID-19 vaccine will contain substances or devices meant to track or identify those who've received it
- Claims that COVID-19 vaccines will make people who receive them magnetic
- Claims that an approved COVID-19 vaccine will alter a person's genetic makeup
- Claims that COVID-19 vaccines do not reduce risk of serious illness or death
- Claims that any vaccine causes contraction of COVID-19
- Claims that a specific population will be required (by any entity except for a government) to take part in vaccine trials or receive the vaccine first
- Content that promotes the use of unapproved or homemade COVID-19 vaccines
- Instructions to counterfeit vaccine certificates, or offers of sale for such documents

**Diagnostic misinformation:** Content that promotes diagnostic information that contradicts local health authorities or WHO.

- Claims that approved COVID-19 tests are dangerous or cause negative physical health effects
- Claims that approved COVID-19 tests cannot diagnose COVID-19

**Transmission misinformation:** Content that promotes transmission information that contradicts local health authorities or WHO.

- Content that claims that COVID-19 is not caused by a viral infection
- Content that claims COVID-19 is not contagious
- Content that claims that COVID-19 cannot spread in certain climates or geographies
- Content that claims that any group or individual has immunity to the virus or cannot transmit the virus

#### **Content that denies the existence of COVID-19:**

- Denial that COVID-19 exists
- Claims that people have not died or gotten sick from COVID-19
- Claims that the death rate of COVID-19 is equal to or less than that of the common cold or seasonal flu
- Claims that COVID-19 is equal to or less transmissible than the common cold or seasonal flu
- Claims that the symptoms of COVID-19 are never severe

This policy applies to videos, video descriptions, comments, live streams, and any other YouTube product or feature. Keep in mind that this isn't a complete list. Please note these policies also apply to [external links](#) in your content. This can include clickable URLs, verbally directing users to other sites in video, as well as other forms.

## Examples

Here are some examples of content that's not allowed on YouTube:

- Denial that COVID-19 exists
- Claims that people have not died from COVID-19
- Claims that any vaccine is a guaranteed prevention method for COVID-19
- Claims that a specific treatment or medicine is a guaranteed cure for COVID-19
- Claims that hydroxychloroquine saves people from COVID-19
- Promotion of MMS (Miracle Mineral Solution) for the treatment of COVID-19

- Claims that certain people have immunity to COVID-19 due to their race or nationality
- Encouraging taking home remedies instead of getting medical treatment when sick
- Discouraging people from consulting a medical professional if they're sick
- Content that claims that holding your breath can be used as a diagnostic test for COVID-19
- Videos alleging that if you avoid Asian food, you won't get the coronavirus
- Videos alleging that setting off fireworks can clean the air of the virus and will prevent the spread of the virus
- Claims that COVID-19 is caused by radiation from 5G networks
- Videos alleging that the COVID-19 test is the cause of the virus
- Claims that countries with hot climates will not experience the spread of the virus
- Claims that COVID-19 vaccines kill people who receive them
- Claims that COVID-19 vaccines are a means of population reduction
- Videos claiming that COVID-19 vaccines contain fetal tissue
- Claims that the flu vaccine causes contraction of COVID-19
- Claims that the flu is more contagious than COVID-19
- Claims that COVID-19 vaccines cause contraction of other infectious diseases or makes people more vulnerable to contraction of other infectious diseases
- Claims that COVID-19 vaccines contain a microchip or tracking device
- Claims that achieving herd immunity through natural infection is safer than vaccinating the population
- Claims that COVID-19 never causes serious symptoms or hospitalization
- Claims that the death rate from the seasonal flu is higher than the death rate of COVID-19
- Claims that people are immune to the virus based on their race
- Claims that children cannot or do not contract COVID-19
- Claims that there have not been cases or deaths in countries where cases or deaths have been confirmed by local health authorities or the WHO

## Educational, documentary, scientific or artistic content

We may allow content that violates the misinformation policies noted on this page if that content includes additional context in the video, audio, title, or description. This is not a pass to promote misinformation. Additional context may include countervailing views from local health authorities or medical experts. We may also make exceptions if the purpose of the content is to condemn, dispute, or satirize misinformation that violates our policies. We may also make exceptions for content showing an open public forum, like a protest or public hearing, provided the content does not aim to promote misinformation that violates our policies.

## What happens if content violates this policy

If your content violates this policy, we'll remove the content and send you an email to let you know. If we can't verify that a link you post is safe, we may remove the link.

If this is your first time violating our Community Guidelines, you'll likely get a warning with no penalty to your channel. If it's not, we may issue a strike against your channel. If you get 3 strikes within 90 days, your channel will be terminated. You can learn more about [our strikes system here](#).

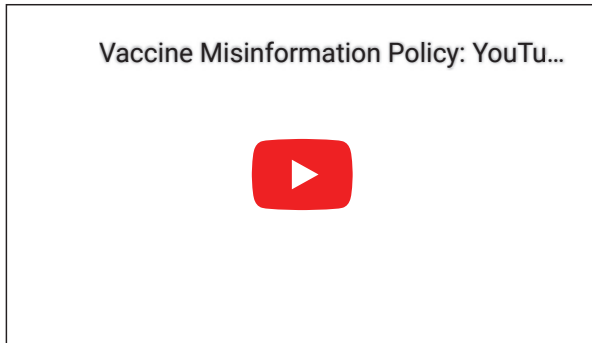
We may terminate your channel or account for repeated violations of the Community Guidelines or Terms of Service. We may also terminate your channel or account after a single case of severe abuse, or when the channel is dedicated to a policy violation. You can learn more about [channel or account terminations here](#).

Need more help?  
Try these next steps:

Post to the help community  
Get answers from community members

## **EXHIBIT B**

## Vaccine misinformation policy



YouTube doesn't allow content that poses a serious risk of egregious harm by spreading medical misinformation about currently administered vaccines that are approved and confirmed to be safe and effective by local health authorities and by the World Health Organization (WHO). This is limited to content that contradicts local health authorities' or the WHO's guidance on vaccine safety, efficacy, and ingredients.

### What this policy means for you

#### If you're posting content

Don't post content on YouTube if it includes harmful misinformation about currently approved and administered vaccines on any of the following:

- **Vaccine safety:** content alleging that vaccines cause chronic side effects, outside of rare side effects that are recognized by health authorities
- **Efficacy of vaccines:** content claiming that vaccines do not reduce transmission or contraction of disease
- **Ingredients in vaccines:** content misrepresenting the substances contained in vaccines

This policy applies to videos, video descriptions, comments, live streams, and any other YouTube product or feature. Keep in mind that this isn't a complete list. Please note these policies also apply to [external links](#) in your content. This can include clickable URLs, verbally directing users to other sites in video, as well as other forms.

### Examples

Here are some examples of content that's not allowed on YouTube:

- Claims that vaccines cause chronic side effects such as:
  - Cancer
  - Diabetes
  - Other chronic side effects
- Claims that vaccines do not reduce risk of contracting illness
- Claims that vaccines contain substances that are not on the vaccine ingredient list, such as biological matter from fetuses (e.g. fetal tissue, fetal cell lines) or animal byproducts
- Claims that vaccines contain substances or devices meant to track or identify those who've received them
- Claims that vaccines alter a person's genetic makeup
- Claims that the MMR vaccine causes autism
- Claims that vaccines are part of a depopulation agenda

- Claims that the flu vaccine causes chronic side effects such as infertility
- Claims that the HPV vaccine causes chronic side effects such as paralysis

## Educational, scientific, artistic, or testimonial content

YouTube may allow content that violates the misinformation policies noted on this page if that content includes additional context in the video, audio, title, or description. This is not a pass to promote misinformation. Additional context may include countervailing views from local health authorities or medical experts. We may also make exceptions if the purpose of the content is to condemn, dispute, or satirize misinformation that violates our policies. We may also make exceptions for content showing an open public forum, like a protest or public hearing, provided the content does not aim to promote misinformation that violates our policies.

YouTube also believes people should be able to share their own experiences, including personal experiences with vaccinations. This means we may make exceptions for content in which creators describe firsthand experiences from themselves or their family. At the same time, we recognize there is a difference between sharing personal experiences and promoting misinformation about vaccines. To address this balance, we will still remove content or channels if they include other policy violations or demonstrate a pattern of promoting vaccine misinformation.

## What happens if content violates this policy

If your content violates this policy, we'll remove the content and send you an email to let you know. If we can't verify that a link you post is safe, we may remove the link.

If this is your first time violating our Community Guidelines, you'll likely get a warning with no penalty to your channel. If it's not, we may issue a strike against your channel. If you get 3 strikes within 90 days, your channel will be terminated. You can learn more about [our strikes system here](#).

We may terminate your channel or account for repeated violations of the Community Guidelines or Terms of Service. We may also terminate your channel or account after a single case of severe abuse, or when the channel is dedicated to a policy violation. You can learn more about [channel or account terminations here](#).

## Additional resources

More information on vaccines, including their safety and efficacy, can be found below.

### Health Authority Vaccine Information:

- [Centers for Disease Control and Prevention \(CDC\)](#) (US)
- [European Vaccination Information Portal](#) (EU)
- [National Health Service](#) (UK)
- [World Health Organization vaccine safety](#) (Global)
- [World Health Organization vaccine preventable diseases](#) (Global)

### Additional Vaccine Information:

- [American Academy of Pediatrics](#) (US)
- [GAVI, the Vaccine Alliance](#) (Global)
- [UNICEF](#) (Global)

Need more help?

Try these next steps:

**Post to the help community**

Get answers from community members

## EXHIBIT C



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**From:** [REDACTED]@twitter.com]  
**Sent:** 1/23/2021 1:08:36 AM  
**To:** Humphrey, Clarke EOP/WHO [REDACTED]@who.eop.gov]  
**CC:** [REDACTED]@twitter.com]; Flaherty, Robert EOP/WHO [REDACTED]@who.eop.gov]  
**Subject:** [EXTERNAL] Re: Flagging Hank Aaron misinfo

Thanks. We recently escalated this.

On Fri, Jan 22, 2021 at 8:05 PM Humphrey, Clarke EOP/WHO [REDACTED]@who.eop.gov> wrote:  
Hey folks —

Wanted to flag the below tweet and am wondering if we can get moving on the process for having it removed ASAP:

><https://twitter.com/RobertKennedyJr/status/1352748139665645569><

And then if we can keep an eye out for tweets that fall in this same ~genre that would be great.

Thanks!  
Clarke

--

[REDACTED]  
Twitter, Inc. | Public Policy  
[@TwitterGov](#) & [@Policy](#)

## EXHIBIT D

**From:** Flaherty, Rob EOP/WHO [REDACTED]@who.eop.gov]  
**Sent:** 4/16/2021 4:25:15 PM  
**To:** Flaherty, Rob EOP/WHO [REDACTED]@who.eop.gov]; Slavitt, Andrew M. EOP/WHO [REDACTED]@who.eop.gov]; [REDACTED]@twitter.com]; [REDACTED]@twitter.com]; [REDACTED]@twitter.com]; [REDACTED]@twitter.com]  
**CC:** Fitzpatrick, Kelsey V. EOP/WHO [REDACTED]@who.eop.gov]; [REDACTED] (HHS/OASH) [REDACTED]@hhs.gov]  
**Subject:** Twitter Vaccine Misinfo Briefing  
**Location:** [REDACTED]  
**Start:** 4/21/2021 2:00:00 PM  
**End:** 4/21/2021 3:00:00 PM  
**Show Time As:** Tentative  
**Recurrence:** (none)

White House Staff will be briefed by Twitter on vaccine misinfo. Twitter to cover trends seen generally around vaccine misinformation, the tangible effects seen from recent policy changes, what interventions are currently being implemented in addition to previous policy changes, and ways the White House (and our COVID experts) can partner in product work.

 The linked im...

Hi there,

[REDACTED] is inviting you to a scheduled ZoomGov meeting.

## [Join Zoom Meeting](#)

Phone US: [REDACTED] or  
 one-tap: [REDACTED]  
 Meeting [REDACTED]  
 URL:  
 Meeting [REDACTED]  
 ID:  
 Passcode: [REDACTED]

## Join by Telephone

For higher quality, dial a number based on your current location.

Dial:

US: [REDACTED]



JS-CAND 44 (Rev. 10/2020)

**CIVIL COVER SHEET**

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS****ROBERT F. KENNEDY, JR.****(b)** County of Residence of First Listed Plaintiff  
(EXCEPT IN U.S. PLAINTIFF CASES)**(c)** Attorneys (Firm Name, Address, and Telephone Number)

John W. Howard, Scott J. Street, JW Howard/Attorneys, 600 West Broadway, Ste. 1400, San Diego, CA 92101 (619) 234-2842

**DEFENDANTS**

GOOGLE LLC, a Delaware corporation, and YOUTUBE, LLC, a Delaware corporation

County of Residence of First Listed Defendant Santa Clara  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff ☒ 3 Federal Question  
(U.S. Government Not a Party)
- 2 U.S. Government Defendant ☐ 4 Diversity  
(Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

|   | PTF | DEF |   | PTF | DEF |
|---|-----|-----|---|-----|-----|
| Citizen of This State                   | 1   | 1   | Incorporated or Principal Place of Business In This State     | 4   | 4   |
| Citizen of Another State                | 2   | 2   | Incorporated and Principal Place of Business In Another State | 5   | 5   |
| Citizen or Subject of a Foreign Country | 3   | 3   | Foreign Nation  | 6   | 6   |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

| CONTRACT  | TORTS                                   | FORFEITURE/PENALTY                                | BANKRUPTCY                                  | OTHER STATUTES   |
|---|---|---|---|--|
| 110 Insurance   | <b>PERSONAL INJURY</b>                  | 625 Drug Related Seizure of Property 21 USC § 881 | 422 Appeal 28 USC § 158                     | 375 False Claims Act   |
| 120 Marine  | 310 Airplane                            | 690 Other   | 423 Withdrawal 28 USC § 157                 | 376 Qui Tam (31 USC § 3729(a))                                       |
| 130 Miller Act  | 315 Airplane Product Liability          | <b>LABOR</b>                                      | <b>PROPERTY RIGHTS</b>                      | 400 State Reapportionment  |
| 140 Negotiable Instrument                                   | 320 Assault, Libel & Slander            | 710 Fair Labor Standards Act                      | 820 Copyrights                              | 410 Antitrust  |
| 150 Recovery of Overpayment Of Veteran's Benefits           | 330 Federal Employers' Liability        | 720 Labor/Management Relations                    | 830 Patent                                  | 430 Banks and Banking  |
| 151 Medicare Act  | 340 Marine                              | 740 Railway Labor Act                             | 835 Patent—Abbreviated New Drug Application | 450 Commerce   |
| 152 Recovery of Defaulted Student Loans (Excludes Veterans) | 345 Marine Product Liability            | 751 Family and Medical Leave Act                  | 840 Trademark                               | 460 Deportation  |
| 153 Recovery of Overpayment of Veteran's Benefits           | 350 Motor Vehicle                       | 790 Other Labor Litigation                        | 880 Defend Trade Secrets Act of 2016        | 470 Racketeer Influenced & Corrupt Organizations                     |
| 160 Stockholders' Suits                                     | 355 Motor Vehicle Product Liability     | 791 Employee Retirement Income Security Act       | <b>SOCIAL SECURITY</b>                      | 480 Consumer Credit  |
| 190 Other Contract  | 360 Other Personal Injury               | <b>IMMIGRATION</b>                                | 861 HTA (1395ff)                            | 485 Telephone Consumer Protection Act                                |
| 195 Contract Product Liability                              | 362 Personal Injury—Medical Malpractice | 462 Naturalization Application                    | 862 Black Lung (923)                        | 490 Cable/Sat TV   |
| 196 Franchise   | <b>CIVIL RIGHTS</b>                     | 465 Other Immigration Actions                     | 863 DIWC/DIWW (405(g))                      | 850 Securities/Commodities/Exchange                                  |
| <b>REAL PROPERTY</b>  | 440 Other Civil Rights                  | <b>PRISONER PETITIONS</b>                         | 864 SSID Title XVI                          | 890 Other Statutory Actions  |
| 210 Land Condemnation                                       | 441 Voting                              | <b>HABEAS CORPUS</b>                              | 865 RSI (405(g))                            | 891 Agricultural Acts  |
| 220 Foreclosure   | 442 Employment                          | 463 Alien Detainee                                | <b>FEDERAL TAX SUITS</b>                    | 893 Environmental Matters  |
| 230 Rent Lease & Ejectment                                  | 443 Housing/Accommodations              | 510 Motions to Vacate Sentence                    | 870 Taxes (U.S. Plaintiff or Defendant)     | 895 Freedom of Information Act                                       |
| 240 Torts to Land   | 445 Amer. w/Disabilities—Employment     | 530 General                                       | 871 IRS—Third Party 26 USC § 7609           | 896 Arbitration  |
| 245 Tort Product Liability                                  | 446 Amer. w/Disabilities—Other          | 535 Death Penalty                                 |   | 899 Administrative Procedure Act/Review or Appeal of Agency Decision |
| 290 All Other Real Property                                 | 448 Education                           | <b>OTHER</b>                                      |   | 950 Constitutionality of State Statutes                              |
|   |   | 540 Mandamus & Other                              |   |  |
|   |   | 550 Civil Rights                                  |   |  |
|   |   | 555 Prison Condition                              |   |  |
|   |   | 560 Civil Detainee—Conditions of Confinement      |   |  |

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation—Transfer ☐ 8 Multidistrict Litigation—Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity).

42 USC 1983, 28 USC 2201 and First Amendment to the US Constitution

Brief description of cause:

Declaratory and injunctive relief to prevent censorship of political speech under state action doctrine.

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P.

**DEMAND \$**CHECK YES only if demanded in complaint:  
**JURY DEMAND:** Yes No**VIII. RELATED CASE(S), IF ANY** (See instructions)

JUDGE

DOCKET NUMBER

**IX. DIVISIONAL ASSIGNMENT** (Civil Local Rule 3-2)

(Place an "X" in One Box Only)

SAN FRANCISCO/OAKLAND

☒ SAN JOSE

EUREKA-MCKINLEYVILLE

DATE 08/02/2023

SIGNATURE OF ATTORNEY OF RECORD



**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44**

**Authority For Civil Cover Sheet.** The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)."
- II. **Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
  - (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
  - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
  - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
  - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. **Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. **Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. **Origin.** Place an "X" in one of the six boxes.
  - (1) Original Proceedings. Cases originating in the United States district courts.
  - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
  - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
  - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
  - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
  - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
  - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Federal Rule of Civil Procedure 23.
 

Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. **Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. **Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: "the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated."

**Date and Attorney Signature.** Date and sign the civil cover sheet.

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_; or

☐ I returned the summons unexecuted because \_\_\_\_\_; or

☐ Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:



AO 440 (Rev. 06/12) Summons in a Civil Action

# UNITED STATES DISTRICT COURT

for the

Northern District of California

ROBERT F. KENNEDY, JR.

*Plaintiff(s)*

v.

GOOGLE, LLC, a Delaware corporation, and  
YOUTUBE, LLC, a Delaware corporation

*Defendant(s)*

Civil Action No.

## SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* YOUTUBE, LLC  
901 Cherry Avenue  
San Bruno, CA 94066

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

John W. Howard  
Scott J. Street  
JW Howard/Attorneys, LTD.  
600 West Broadway, Ste. 1400  
San Diego, CA 92101

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: \_\_\_\_\_

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*



AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_.

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the summons unexecuted because \_\_\_\_\_; or

☐ Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

# EXHIBIT G

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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

ROBERT F. KENNEDY, JR.,

Plaintiff,

vs.

GOOGLE LLC, a Delaware  
corporation, and YOUTUBE, LLC, a  
Delaware corporation,

Defendants.

Case No. 5:23-cv-03880-NC

[Assigned to the Hon. Nathanael  
Cousins]

**APPLICATION FOR TEMPORARY  
RESTRAINING ORDER;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT**

[Filed concurrently with Declarations of  
Robert F. Kennedy, Jr., Amaryllis  
Kennedy and Scott J. Street; [Proposed]  
TRO and [Proposed] OSC lodged  
concurrently]

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**TO ALL PARTIES AND THEIR COUNSEL OF RECORD**

**PLEASE TAKE NOTICE** that Plaintiff Robert F. Kennedy, Jr., hereby applies to the Court for an order temporarily restraining Defendants Google LLC and YouTube, LLC, from using their “medical misinformation” policies to remove videos of Mr. Kennedy’s speech on matters of public concern from YouTube during the 2024 presidential campaign. Mr. Kennedy also applies to the Court for an order to show cause regarding the issuance of a preliminary injunction for the same relief pending a trial on the merits.

This application is made pursuant to Rule 65 of the Federal Rules of Civil Procedure. It is based on this application, the concurrently filed memorandum of points and authorities and declarations signed by Mr. Kennedy, Amaryllis Kennedy and Scott J. Street, as well any further evidence and argument as may be presented.

There is good cause to grant this relief. The First Amendment prohibits the government from censoring Mr. Kennedy based on the content of his speech. The First Amendment, buttressed by the state action doctrine, also prohibits the government from using a third party like Google to censor Mr. Kennedy. That is what happened here and what warrants this extraordinary relief.

DATED: August 9, 2023

JW HOWARD/ATTORNEYS, LTD.

By: */s/ Scott J. Street*

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## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. INTRODUCTION**

The Supreme Court has made clear that, when it comes to the political process, content-based restrictions on speech are never allowed. They stifle speech. They distort the marketplace of ideas. They prevent the robust debate on which American democracy depends.

That principle is being undermined in the 2024 campaign. Robert F. Kennedy, Jr., is an accomplished lawyer, the son of an attorney general, the nephew of a president. He is challenging Joe Biden for the Democratic Party's presidential nomination. Yet Mr. Kennedy is regularly censored in the media, including on YouTube, which has removed videos of his speeches and interviews.

The First Amendment clearly prohibits the government from censoring Mr. Kennedy. But that does not end the analysis. The First Amendment, combined with the state action doctrine, also bars a private party like Google (which owns YouTube) from censoring Mr. Kennedy when it relies on a government policy to do so.

That is the case here. Google cites its "vaccine misinformation policy" when it removes videos of Kennedy from YouTube. That policy looks entirely to the government to decide what to censor. It does not permit speech that "contradicts" the government's statements or which the government deems dangerous. Thus, the government's beliefs provide the rule of decision. That alone satisfies the state action doctrine and causes the misinformation policy to violate the First Amendment.

That is not the only reason, though. As documents discovered in other litigation have revealed, Google worked with the federal government during the COVID-19 pandemic to create, implement and enforce the vaccine misinformation policy. They described their relationship as a "partnership" in which Google shared the government's censorship goals. A public-private partnership to combat speech that the government does not want Americans to hear violates the First Amendment,

1 especially when done in the coercive environment created by the Biden  
2 Administration.

3 Americans may agree with Mr. Kennedy's views. They may disagree with  
4 them. They may select Kennedy as the Democratic Party's nominee or reject him at  
5 the ballot box. Whatever the case, our Constitution requires that voters have an  
6 unfettered chance to hear Mr. Kennedy speak. That is the only way they can make an  
7 educated decision when exercising their right to vote.

8 We instinctively think of the First Amendment as protecting the speaker. But it  
9 is the *listener* for whom the Founders wrote the First Amendment. "The right to think  
10 is the beginning of freedom, and speech must be protected from the government  
11 because speech is the beginning of thought." *Ashcroft v. Free Speech Coal.*, 535 U.S.  
12 234, 253 (2002). That is why speech matters.

13 Using government policies to remove Mr. Kennedy's political speech from  
14 YouTube violates that principle, especially when those decisions flow from a  
15 partnership that Google embraced and through which it carried out its common goal of  
16 censoring speech the government does not want Americans to hear. And, unless the  
17 Court acts, Google will continue to engage in this unconstitutional action during the  
18 2024 campaign. The danger to political discourse cannot be overstated. Therefore, the  
19 Court should issue an order preliminary enjoining Google from removing any videos  
20 of Mr. Kennedy based on its medical misinformation policies.

## 21 **II. FACTS**

22 Mr. Kennedy is a lawyer, a son of former Attorney General Robert F. Kennedy  
23 and a nephew of former President John F. Kennedy. Mr. Kennedy is seeking the  
24 Democratic Party's nomination for president, having declared his candidacy on April  
25 19, 2023. Declaration of Scott J. Street, dated August 9, 2023 ("Street Decl."), ¶ 3.

26 Before announcing his campaign, Mr. Kennedy took a strong stance against the  
27 Democratic National Committee's effort to strip New Hampshire of its "First in the  
28

1 Nation” primary. *Id.* He accepted an invitation to speak about that and other issues at  
2 Saint Anselm College’s New Hampshire Institute of Politics (“NHIOP”) in March. *Id.*  
3 His speech, which was viewed as a political speech and attended by several prominent  
4 New Hampshire Democrats, including the chairman of New Hampshire’s Democratic  
5 Party, lasted nearly two hours. *Id.*, ¶¶ 3-4. It centered on Mr. Kennedy’s concerns  
6 about the corrupt merger of corporate and state power, a danger he has fought for  
7 years and which, in recent years, caused him to question the increasing number of  
8 vaccines American children are required to take. *Id.*, ¶ 4.

9 Manchester Public Television posted a video of Mr. Kennedy’s speech on  
10 YouTube. *Id.*, ¶ 5. Google removed it. *Id.* The station’s director said: “YouTube will  
11 not allow us to post the video because of controversial vaccination content. MPTS has  
12 recorded more than 100 wonderful NHIOP events, and I cannot recall this happening  
13 before.” *Id.*, Exh. A.

14 Mr. Kennedy complained about the action, particularly since his comments  
15 about vaccine safety only consumed a portion of the NHIOP speech (in other parts he  
16 spoke about his environmentalism and legal work fighting corporate polluters, among  
17 other things). *Id.*, ¶ 6. Google refused to change its position. It said it “removed the  
18 [Kennedy speech] for violating our policies on COVID-19 vaccine misinformation ....  
19 While we do allow content with educational, documentary, scientific or artistic  
20 context, such as news reports, the content we removed from this channel was raw  
21 footage and did not provide sufficient context.” *Id.*, Exh. B.

22 Google has removed other videos of Kennedy since he announced his  
23 candidacy on April 19, including interviews he did with Jordan Peterson and Joe  
24 Rogan. Declaration of Robert f. Kennedy, Jr., dated August 8, 2023 (“RFK Decl.”), ¶  
25 4; Declaration of Amaryllis Kennedy, dated August 8, 2023 (“A. Kennedy Decl.”), ¶¶  
26 4-5, Exh. A. Again, although Google cited its vaccine misinformation policy to justify  
27 these decisions, it removed the entire video. *Id.*

1 Mr. Kennedy complained to Google about these matters. A. Kennedy Decl., ¶ 8.  
2 But unlike Facebook and Twitter, Google has continued to use its misinformation  
3 policies (primarily the vaccine policy) to remove Kennedy’s political speech from  
4 YouTube. RFK Decl., ¶ 4. It will continue to do so throughout the 2024 campaign.  
5 Indeed, despite repeated requests from his campaign, Google has not allowed  
6 Kennedy to control the biographical information that it displays for him in response to  
7 user searches, something it gives to other political candidates. A. Kennedy Decl., ¶ 8.

8 This is just one of the many obstacles that Mr. Kennedy has had to deal with  
9 during the campaign. But it has a huge impact. During the early stages of the 2016  
10 campaign—say between April 2015 and March 2016—YouTube users consumed  
11 roughly 110 million hours of election-related content on YouTube, much of which  
12 was viewed on mobile devices. Street Decl., Exh. E. Kate Stanford, the director of  
13 YouTube’s advertiser marketing at the time, made much of that, saying: “Voter  
14 decisions used to be made in living rooms, in front of televisions. Today, they’re  
15 increasingly made in micro-moments, on mobile devices.” *Id.*

16 Thus, YouTube has become an important platform for political campaigns,  
17 especially when it comes to raw content like candidate interviews and speeches, which  
18 used to be seen primarily on television. RFK Decl., ¶¶ 5-6; A. Kennedy Decl., ¶¶ 6-8.  
19 YouTube is an especially important platform for Mr. Kennedy, who many mainstream  
20 media outlets have simply refused to cover and who congressional Democrats recently  
21 tried to censor (at a hearing on censorship, no less). *Id.*; Street Decl., ¶ 32, Exhs. Q, R.

22 Kennedy has repeatedly asked Google to stop applying its misinformation  
23 policies to censor him during the presidential campaign. A. Kennedy Decl., ¶ 8. It  
24 refused. *Id.* That led to the filing of this case. It comes on the heels of a similar case  
25 that was filed in Louisiana by two state attorneys general, *Missouri et al. v. Biden et*  
26 *al.*, No. 3:22-cv-01213-TAD-KDM (the “State AG Censorship Case”). On July 4,  
27 Judge Terry Doughty issued a lengthy decision that enjoins federal government  
28

officials from coercing technology companies to censor the government’s critics. Street Decl., ¶ 12. The injunction does not bind the technology companies themselves, though, and thus does not prohibit Google from continuing to censor Mr. Kennedy based on the misinformation policies it developed with the government. *Id.*

The government appealed the decision in the State AG Censorship Case to the Fifth Circuit Court of Appeals, which will hear argument tomorrow. *Id.*, ¶ 13.

### III. LEGAL STANDARD

The same standard that governs requests for a preliminary injunction applies to applications for a temporary restraining order. *Stuhlbarg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). The moving party usually “must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008). But in this context, “the First Amendment context, the moving party bears the initial burden of making a colorable claim that its First Amendment rights have been infringed, or are threatened with infringement, at which point the burden shifts to the government [or, here, a third party accused of engaging in state action] to justify the restriction.” *Thalheimer v. City of San Diego*, 645 F.3d 1109, 1116 (9th Cir. 2011).

There is also a lower standard that the Ninth Circuit has used to grant temporary relief when the moving party raises “serious questions going to the merits” and shows that “the balance of hardships tips sharply in the plaintiff’s favor.” *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011). Courts in this circuit often use the “serious questions” test instead of the *Winter* test when the case involves First Amendment rights. *See, e.g., Index Newspapers, LLC v. City of Portland*, 474 F. Supp. 3d 1113, 1125 (D. Or. 2020) (applying serious questions test, instead of *Winter*, to grant TRO in First Amendment case brought by media); *U.S. WeChat Users*

1 *Alliance v. Trump*, 488 F. Supp. 3d 912, 916 (2020) (applying serious questions test to  
2 grant injunction in First Amendment case brought by people using WeChat app).

### 3 **IV. ARGUMENT**

4 The Court should grant the application because Google violates the First  
5 Amendment when it removes video of Mr. Kennedy based on misinformation policies  
6 that rely entirely on the government to decide what speech to censor and because the  
7 public and private interests at stake weigh heavily in favor of allowing robust debate  
8 on these matters of public concern.

#### 9 **A. The State Action Doctrine Applies When the Government Tells Google** 10 **What Information to Censor, Especially Under These Circumstances.**

11 As explained below, there is no doubt that Google’s medical misinformation  
12 policies would violate the First Amendment if they were issued by the government.  
13 After all, they make distinctions about which speech is allowed on YouTube based on  
14 the speech’s content. “It is axiomatic that the government may not regulate speech  
15 based on its substantive content or the message it conveys.” *Rosenberger v. Rector &*  
16 *Visitors of Univ. of Va.*, 515 U.S. 819, 828 (1995). Thus, Google’s primary argument  
17 will be that, unlike the government, *it* can decide which speech to allow, or not allow,  
18 on YouTube based on its content. It is wrong.

19 A “private entity is not ordinarily constrained by the First Amendment ....”  
20 *Manhattan Cmty. Access Corp. v. Halleck*, -- U.S. --, 139 S. Ct. 1921, 1930 (2019).  
21 But it may be sued for violating a person’s constitutional rights under certain  
22 circumstances. Under Ninth Circuit law, “there is no specific formula for defining  
23 state action.” *Howerton v. Gabica*, 708 F.2d 380, 383 (9th Cir. 1983) (quotations  
24 omitted). But the court recognizes “at least four different criteria, or tests, used to  
25 identify state action: (1) public function; (2) joint action; (3) government compulsion  
26 or coercion; and (4) governmental nexus.” *Kirtley v. Rainey*, 326 F.3d 1088, 1092 (9th  
27 Cir. 2003) (cleaned up).



1           Whatever test is used, this analysis is “necessarily fact-bound ....” *Lugar v.*  
2     *Edmondson Oil Co.*, 457 U.S. 922, 939 (1982). It focuses on deciding whether  
3     “seemingly private behavior may be fairly treated as that of the State itself.”  
4     *Brentwood Academy v. Tenn. Secondary Sch. Athletic Ass’n*, 531 U.S. 288, 295 (2001)  
5     (quotations omitted).

6           *Brentwood* represented a sea change in the Supreme Court’s state action  
7     jurisprudence. It stopped the narrowing of the doctrine that had developed since the  
8     1980s and moved the doctrine back to the functional analysis that Justice Brennan had  
9     urged in cases like *Blum v. Yaretsky*, 457 U.S. 991, 1013 (1982) (Brennan and  
10    Marshall, JJ., dissenting). The Ninth Circuit did the same thing. For example, in *Lee v.*  
11    *Katz*, 276 F.3d 550 (9th Cir. 2002), the court reversed a district court’s decision that  
12    found no state action in a case brought by preachers against a private party (the  
13    “OAC”) who leased land (the “Commons”) from the City of Portland. The OAC had  
14    occasionally excluded the preachers from preaching on the land, a plaza near  
15    Portland’s basketball arena. The City played no role in excluding the preachers from  
16    the property: the OAC, a private entity, made that decision for its own reasons. *Id.* at  
17    552-53. But the court “conclude[d] that, in regulating speech within the Commons, the  
18    OAC performs an exclusively and traditionally public function within a public  
19    forum.” *Id.* at 557. That satisfied the state action doctrine.

20           Similarly, in *Rawson v. Recovery Innovations, Inc.*, 975 F.3d 742 (9th Cir.  
21    2020), the Ninth Circuit reversed a grant of summary judgment for the defendant, a  
22    private entity that operated a private hospital, which the plaintiff sued after he was  
23    involuntarily committed at the hospital. The Court emphasized that, “[a]t bottom, the  
24    inquiry is always whether the defendant has exercised power possessed by virtue of  
25    state law and made possible only because the wrongdoer is clothed with the authority  
26    of state law.” *Id.* at 748 (quotations omitted). And it concluded that the private health  
27    care workers could potentially be held liable as state actors because a “county  
28



1 prosecutor played an outsized role in the duration of [the plaintiff’s] detention” at the  
2 private facility. *Id.* at 754.

3 Other examples abound, including a case in which the Ninth Circuit found a  
4 private towing company to be a state actor because it acted “at the behest of a police  
5 officer,” *Goichman v. Rheuban Motors, Inc.*, 682 F.2d 1320, 1322 (9th Cir. 1982), and  
6 a case in which the Ninth Circuit found potential joint action between a landlord and  
7 police officers based on their joint and repeated efforts to evict one of the landlord’s  
8 tenants, *Howerton*, 708 F.2d at 385.

9 Google’s actions in removing Kennedy’s speeches and interviews from  
10 YouTube satisfy several of these state action tests. First, Mr. Kennedy has obtained  
11 evidence that government officials were the ones who directed Google and other  
12 technology companies to censor him. Street Decl., Exhs. F-P. They did so not as part  
13 of a one-way information sharing agreement like the one involved in *O’Handley v.*  
14 *Padilla*, 579 F. Supp. 3d 1163 (N.D. Cal. 2022), affirmed 62 F.4th 1145 (9th Cir.  
15 2023), but through a deeply intertwined partnership in which the government tells  
16 Google what information (and, in Kennedy’s case, who) to censor and Google  
17 delivers. Street Decl., Exhs. F-P.

18 Judge Doughty discussed this alliance of government and corporate power in  
19 the State AG Censorship Case when he applied the state action doctrine to enjoin  
20 government officials from working with technology companies to remove alleged  
21 misinformation from social media. For example, with respect to Google/YouTube,  
22 Judge Doughty described several acts of coordination that raised constitutional  
23 problems, including:

- 24 • An April 21, 2021, meeting between YouTube officials and White House  
25 advisers Rob Slavitt and Andrew Flaherty about “general trends seen  
26 around vaccine misinformation, the effects of YouTube’s efforts to  
27 combat misinformation, interventions YouTube was trying, and ways the  
28

White House can ‘partner’ [with YouTube] in product work.” *Missouri v. Biden*, -- F. Supp. 3d --, 2023 WL 4335270, at \*9 (W.D. La. July 4 2023).

- An April 22, 2021, email in which Flaherty recapped the prior day’s meeting and said that the White House’s efforts to remove alleged COVID misinformation from YouTube was “‘shared at the highest (and I mean the highest) levels of the White House.’” *Id.* at \*10.
- Regular meetings between Google/YouTube executives and White House officials about removing alleged COVID misinformation from YouTube, as they had done with other “platform partners” like Facebook and Twitter. *Id.*
- Emails sent between the Surgeon General’s office and Google/YouTube about the Surgeon General’s goal “to stop the spread of misinformation” in cyberspace, in response to which “YouTube eventually adopted a new policy on combatting COVID-19 misinformation and began providing federal officials with updates on YouTube’s efforts to combat the misinformation.” *Id.* at \*15.
- A July 30, 2021, meeting between Google/YouTube executives and officials from the Surgeon General’s office in which “Google and YouTube reported to Office of the Surgeon General what actions they were taking following the Surgeon General’s health advisory on misinformation.” *Id.*
- A September 14, 2021, meeting between Google/YouTube executives, White House adviser Flaherty and the Surgeon General’s office “to discuss” the new vaccine misinformation policy policy that the executives and the government developed. *Id.*

Judge Doughty also described how the CDC and Census Bureau have regular

1 meetings with Google/YouTube about removing alleged medical misinformation  
 2 which “continue[ ] to the present day.” *Id.* at \*22. And he discussed the role that FBI  
 3 agent Elvis Chan plays in the public-private censorship project. Chan, who is based in  
 4 the FBI’s field office in San Francisco, testified that the FBI is part of an “industry  
 5 working group” that includes Google/YouTube and which works with federal  
 6 agencies to remove alleged misinformation online. *Id.* at \*27-28. Chan said that these  
 7 meetings occurred throughout 2022 and “will continue through the 2024 election  
 8 cycle.” *Id.* at \*28.

9 Judge Doughty had no problem finding these actions to constitute state action,  
 10 and to violate the First Amendment, because at least some of the government officials  
 11 “either exercised or provided significant encouragement, which resulted in the  
 12 possible suppression of Plaintiffs’ speech.” *Id.* at \*42; *see also id.* at \*48 (emphasizing  
 13 that both White House officials and tech executives referred to themselves as  
 14 “‘partners’ and ‘on the same team’ in their efforts to censor disinformation, such as  
 15 their efforts to censor ‘vaccine’ hesitancy”). Indeed, Judge Doughty concluded that  
 16 federal government officials “aligned themselves with and partnered with” third  
 17 parties like Google “to avoid Government involvement with free speech” that would  
 18 clearly violate the First Amendment. *Id.* at \*52.

19 This is exactly the type of conduct that the state action doctrine was designed to  
 20 prevent. We are not the only ones who think so. Despite affirming the dismissal of a  
 21 censorship lawsuit brought against Twitter, the Ninth Circuit acknowledged that “[a]  
 22 constitutional problem would arise if [a technology company like] Twitter had agreed  
 23 to serve as an arm of the government, thereby fulfilling the State’s censorship goals.”  
 24 *O’Handley*, 62 F.4th at 1159. That is exactly what Google is doing to Mr. Kennedy.

25 In fact, Google’s actions are worse than the actions alleged in *O’Handley*. It is  
 26 using a policy that it developed in connection with (and in response to demands from)  
 27 the incumbent government to silence one of the government’s most prominent critics,  
 28

1 someone who is targeting the corrupt merger of state and corporate power and who  
2 has vowed to dismantle the corporate/administrative state if elected.

3 Google’s actions would satisfy even the strictest of the state action tests: the  
4 “rule of decision” test discussed in *Lugar*. After all, Google’s medical misinformation  
5 policies rely *entirely* on the government. Street Decl., Exhs. C, D. They prohibit  
6 speech that “contradicts” government statements and which the government deems  
7 dangerous *Id.* The vaccine misinformation policy itself appears to have been written  
8 jointly by Google and government officials (and in response to government demands  
9 for it) during the summer of 2021. Street Decl., Exhs. F-K. Even if Google itself  
10 decides when to remove such dissent—and, in Mr. Kennedy’s case, the evidence  
11 suggests otherwise—that does not matter, as “a single act of independent judgment  
12 does not fully insulate a private party from constitutional liability when the party is  
13 otherwise deeply intertwined with the government ....” *O’Handley*, 579 F. Supp. 3d at  
14 1158 n.2 (citing *Rawson*); *cf. Thornton v. Kroger Co.*, No. CIV 20-1040 JB/JFR, 2022  
15 WL 488932, at \*61 (D.N.M. Feb. 17, 2022) (noting that state action cases often  
16 involve “a substantial degree of cooperative action” or showing that state and private  
17 actors “shared a common, unconstitutional goal” (quotations omitted)).

18 Moreover, the State AG Censorship Case has already uncovered evidence of  
19 White House officials pressuring technology companies to censor Kennedy. Street  
20 Decl., Exh. P. This started within days of President Biden’s inauguration. *Id.*  
21 Discovery will likely reveal more of this, including evidence that the White House’s  
22 targeting of Mr. Kennedy for censorship increased after he challenged the president.

23 Thus, Mr. Kennedy is likely to prevail on his argument that Google can be held  
24 liable under the state action doctrine for removing his speech based on its content.

### 25 **B. Kennedy Is Likely to Prevail on the Merits.**

26 Mr. Kennedy is also likely to prevail on his claim that the act of removing his  
27 speech from YouTube because of its content violates the First Amendment.

1 Under the First Amendment, the government “has no power to restrict  
2 expression because of its messages, its ideas, its subject matter, or its content.” *Reed v.*  
3 *Town of Gilbert, Ariz.*, 576 U.S. 155, 163 (2015) (quotations omitted). “A law that is  
4 content based on its face is subject to strict scrutiny regardless of the government’s  
5 benign motive, content-neutral justification, or lack of animus toward the ideas  
6 contained in the regulated speech.” *Id.* at 165 (quotations omitted). A law is content  
7 based if it “draws distinctions based on the message a speaker conveys.” *Recycle for*  
8 *Change v. City of Oakland*, 856 F.3d 666, 670 (9th Cir. 2017). Such restrictions are  
9 “presumptively invalid” and can be upheld only if they represent “the least restrictive  
10 means of furthering a compelling government interest.” *A.C.L.U. of Nev. v. City of*  
11 *Las Vegas*, 466 F.3d 784, 792 (9th Cir. 2006).

12 Viewpoint discrimination that occurs in the political process is especially  
13 noxious. The First Amendment “affords the broadest protection” possible to political  
14 speech. *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 346-47 (1995). “Whatever  
15 differences may exist about interpretations of the First Amendment, there is  
16 practically universal agreement that a major purpose of that Amendment was to  
17 protect the free discussion of governmental affairs.” *Mills v. Alabama*, 384 U.S. 214,  
18 218-19 (1966). “Indeed, it is of particular importance that candidates have the  
19 unfettered opportunity to make their views known so that the electorate may  
20 intelligently evaluate the candidates’ personal qualities and their positions on vital  
21 public issues before choosing among them on election day.” *Buckley v. Valeo*, 424  
22 U.S. 1, 52-53 (1976) (per curiam).

23 It does not matter that some people may find the affected speech to be  
24 dangerous, misleading, or even false (although the comments that Mr. Kennedy makes  
25 that usually get censored are true statements or opinions that the government says are  
26 misleading or lack “context”). “The social interest that the First Amendment  
27 vindicates is ... the interest in the successful operation of the political process, so that

1 the country may be better able to adopt the course of action that conforms to the  
 2 wishes of the greatest number, whether or not it is wise or is founded in truth.”  
 3 Alexander M. Bickel, *The Morality of Consent* 62 (2d ed. 1975) (hereafter “Bickel”).  
 4 Echoing that principle, “the Supreme Court has relied on the strong presumption that  
 5 First Amendment protections have little to do with the caliber and quality of the  
 6 speech involved, but ... with the broad protection of the speech itself in order to  
 7 encourage a robust exchange of ideas in political campaigns for elected office.” *Butler*  
 8 *v. Ala. Judicial Inquiry Comm’n*, 111 F. Supp. 2d 1224, 1238 (M.D. Ala. 2000).

9 Thus, in *Butler*, a court invalidated a judicial canon that prohibited candidates  
 10 from disseminating “true information about a judicial candidate or an opponent that  
 11 would be deceiving or misleading to a reasonable person.” *Id.* at 1233. The court  
 12 noted the “difficulties [that] arise in ascertaining when the dissemination of ‘true  
 13 information’ should be deemed ‘deceiving or misleading’” including the fact that  
 14 “[w]hat is ‘deceiving or misleading’ to one reasonable person may not necessarily be  
 15 ‘deceiving or misleading’ to another reasonable person.” *Id.* at 1237. Similarly, in  
 16 *Beshear v. Butt*, 863 F. Supp. 913, 916-17 (E.D. Ark. 1994), a court found that a  
 17 judicial canon that prohibited candidates from “announcing views on disputed legal or  
 18 political issues” was “substantially overbroad and vague” and thus violated the First  
 19 Amendment. (Cleaned up.)

20 And, of course, in *New York Times Company v. Sullivan*, 376 U.S. 254, 271  
 21 (1964), the Supreme Court held that the First Amendment guarantees the right to lie,  
 22 saying: “Authoritative interpretations of the First Amendment guarantees have  
 23 consistently refused to recognize an exception for any test of truth—whether  
 24 administered by judges, juries, or administrative officials—and especially one that  
 25 puts the burden of proving truth on the speaker.” That is true especially in the political  
 26 process and “even though the utterance contains ‘half-truths’ and ‘misinformation.’”  
 27 *Id.* at 273.



1 The government-guided censorship of Mr. Kennedy on YouTube violates these  
2 settled principles. It is content-based discrimination of speech that does not satisfy  
3 strict scrutiny. *See Berger v. City of Seattle*, 569 F.3d 1029, 1050-52 (9th Cir. 2009)  
4 (explaining why strict scrutiny governs this analysis). Regardless of the reason Google  
5 and its government partners cite for censoring people who disagree with the  
6 government about medical issues, their misinformation policies are unconstitutionally  
7 vague because they do not “give a person of ordinary intelligence a reasonable  
8 opportunity to know what is prohibited” and because they encourage “arbitrary and  
9 discriminatory enforcement.” *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972).  
10 Indeed, although Google often removes high-profile videos of Mr. Kennedy from  
11 YouTube, such as the Rogan and Peterson interviews, it does not remove them all. A.  
12 Kennedy Decl., ¶ 4. That arbitrary enforcement undermines the misinformation  
13 policies’ supposed necessity and creates a chilling effect that the Supreme Court has  
14 applied the vagueness doctrine strictly to avoid. *Bullfrog Films, Inc. v. Wick*, 847 F.2d  
15 502, 512 (9th Cir. 1988); *see also Foti v. City of Menlo Park*, 146 F.3d 629, 638 (9th  
16 Cir. 1998) (noting that “when First Amendment freedoms are at stake, an even greater  
17 degree of specificity and clarity of laws is required”).

18 The misinformation policies also violate the overbreadth doctrine, as their  
19 “very existence may cause others not before the court to refrain from constitutionally  
20 protected speech or expression.” *Broderick v. Oklahoma*, 413 U.S. 601, 612 (1972).  
21 This interest is particularly acute here as Google does not just use its misinformation  
22 policies to remove government dissent from YouTube: it reserves the right to sanction  
23 the people who post the speech. Street Decl., Exhs. C, D. And it has removed content,  
24 including Kennedy’s NHIOP speech, because it “was raw footage and did not provide  
25 sufficient context.” *Id.*, Exh. D. Thus, the policies will likely be used to censor  
26 constitutionally protected speech during the 2024 campaign.

27 In sum, Mr. Kennedy will likely prevail on his argument that the medical  
28

misinformation policies that Google developed with the government, and which Google has cited to remove Kennedy’s political speech from YouTube, violate the First Amendment. At minimum, there are serious questions about the constitutionality of Google’s actions in this censorship partnership which, given the political context, justify preliminary injunctive relief.

### **C. Even Temporary First Amendment Violations Cause Irreparable Harm.**

There is no dispute that Mr. Kennedy will suffer irreparable harm if the Court does not order Google to stop using its government-induced misinformation policies to censor Kennedy during his political campaign. Nor could there be. “The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976); *see also Warsoldier v. Woodford*, 418 F.3d 989, 1001-02 (9th Cir. 2005) (noting that irreparable injury is often presumed when plaintiff alleges a “colorable First Amendment claim”). “Even a temporary restriction on speech an even for minimal periods of time constitutes irreparable injury.” *Flores v. Bennett*, 635 F. Supp. 3d 1020, 1045 (E.D. Cal. 2022).

### **D. The Balance of Harms Strongly Supports Granting the Application.**

Finally, the balance of equities tips sharply in Mr. Kennedy’s favor, as does the public interest. “The Ninth Circuit has consistently recognized the significant public interest in upholding First Amendment principles.” *Doe v. Harris*, 772 F.3d 563, 583 (9th Cir. 2014); *see also* Bickel at 61 (explaining that “it is the hypothesis of the First Amendment that injury is inflicted on our society when we stifle the immediacy of speech”). Moreover, Kennedy has shown that the censorship of him on YouTube hurts his political campaign. RFK Decl., ¶¶ 5-6; A. Kennedy Decl., ¶¶ 6-8.

By contrast, Google will not suffer any harm if the Court enjoins it from enforcing the government-induced medical misinformation policies against Mr. Kennedy during his political campaign. After all, Google cannot be held liable for



content posted on YouTube. 47 U.S.C. § 230(c)(1). The only possible harm that Google could cite is the federal government’s interest in encouraging Americans to do what it recommends about medical matters but “[t]he Supreme Court has established that the government may not proscribe speech merely because it offends someone or because it contains an unpopular viewpoint.” *Flores*, 635 F. Supp. 3d at 1038.

**E. The Court Should Set an Expedited Hearing and, if Necessary, Allow Limited Discovery Before Entering a Preliminary Injunction.**

If the Court has any doubts about the propriety of the requested injunction, it should give Mr. Kennedy the chance to conduct limited discovery regarding the state action issues discussed above. *See Am. LegalNet, Inc. v. Davis*, 673 F. Supp. 2d 1063, 1067 (C.D. Cal. 2009) (explaining when courts find “good cause” to grant discovery in connection with motion for preliminary injunction).

The discovery would be targeted to a few subjects and would include:

- Communications between Google/YouTube executives and Executive Branch officials (especially White House, Surgeon General and CDC officials) about the new vaccine misinformation policy adopted by Google during the summer of 2021.
- Communications between Google/YouTube executives and Executive Branch officials about alleged misinformation spread by Mr. Kennedy.
- Communications between Google/ YouTube executives and Executive Branch officials about removing any videos of Mr. Kennedy from YouTube.
- Communications between Google/YouTube executives and Executive Branch officials about Mr. Kennedy’s speech at the NHIOP and any other political speeches or interviews he has done during 2023.

Street Decl., ¶¶ 28-30. This discovery could be done quickly and would shed even more light on the public-private partnership that has been used to censor Mr.

1 Kennedy during the past two years and which, if not stopped, will be used in an  
2 unprecedented manner to prevent Americans from hearing what a viable presidential  
3 candidate says about matters of public concern.

4 **V. CONCLUSION**

5 For the foregoing reasons, Mr. Kennedy respectfully requests that the Court  
6 grant the application and issue the requested TRO or an order to show cause about  
7 why Google should not be enjoined from using its misinformation policies to remove  
8 Kennedy's speech on matters of public concern from YouTube during the 2024  
9 campaign.

10  
11 DATED: August 9, 2023

JW HOWARD/ATTORNEYS, LTD.

12  
13  
14 By: /s/ Scott J. Street

15 John W. Howard

16 Scott J. Street

17 Andrew G. Nagurney

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15 ROBERT F. KENNEDY, JR.

16 **UNITED STATES DISTRICT COURT**  
17 **NORTHERN DISTRICT OF CALIFORNIA**

18 ROBERT F. KENNEDY, JR.,

19 Plaintiff,

20 vs.

21 GOOGLE LLC, a Delaware  
22 corporation, and YOUTUBE, LLC, a  
23 Delaware corporation,

24 Defendants.

Case No. 5:23-cv-03880-NC

[Assigned to the Hon. Nathanael  
Cousins]

**DECLARATION OF SCOTT J.  
STREET**

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**DECLARATION OF SCOTT J. STREET**

I, Scott J. Street, declare as follows:

1. I am an attorney duly licensed to practice before all courts in the state of California and before this Court. I am a partner with the law firm JW Howard/Attorneys, Ltd., counsel of record to Plaintiff Robert F. Kennedy, Jr., in this matter. I have personal knowledge of the facts set forth in this declaration and could testify competently to them if called to do so.

2. I am submitting this declaration in support of Mr. Kennedy's application for an order temporarily restraining Defendants Google LLC and YouTube, LLC, from enforcing their "medical misinformation" policies to remove videos of Mr. Kennedy's speech on matters of public concern from YouTube during the 2024 presidential campaign. Mr. Kennedy also applies to the Court for an order to show cause regarding the issuance of a preliminary injunction for the same relief pending a trial on the merits.

3. Mr. Kennedy is seeking the Democratic Party's nomination for president, having declared his candidacy on April 19, 2023. Before announcing his campaign, Mr. Kennedy took a strong stance against the Democratic National Committee's effort to strip New Hampshire of its "First in the Nation" primary. He accepted an invitation to speak about that and other issues at Saint Anselm College's New Hampshire Institute of Politics ("NHIOP") in March.

4. Mr. Kennedy's NHIOP speech, which I attended, was viewed as a political speech and was attended by several prominent New Hampshire Democrats including the chairman of New Hampshire's Democratic Party. It lasted nearly two hours and centered on Mr. Kennedy's concerns about the corrupt merger of corporate and state power, an issue he has fought about for years and which, in recent years, caused him to question the increasing numbers of vaccines American children must take.

1           5.       Manchester Public Television posted a video of Mr. Kennedy’s speech  
2 on YouTube. Google removed it. The station’s director said: “YouTube will not allow  
3 us to post the video because of controversial vaccination content. MPTS has recorded  
4 more than 100 wonderful NHIOP events, and I cannot recall this happening before.”  
5 A true and correct copy of a news article that reported on the matter on March 6,  
6 2023, is attached as **Exhibit “A.”**

7           6.       Mr. Kennedy complained about the action, particularly since his  
8 comments about vaccine safety only consumed a portion of the NHIOP speech (in  
9 other parts he spoke about his environmentalism and legal work fighting corporate  
10 polluters, among other things). Google refused to change its position. It said it  
11 “removed the [Kennedy speech] for violating our policies on COVID-19 vaccine  
12 misinformation .... While we do allow content with educational, documentary,  
13 scientific or artistic context, such as news reports, the content we removed from this  
14 channel was raw footage and did not provide sufficient context.” A true and correct  
15 copy of a news report from March 8, 2023, about this matter and which contains  
16 Google’s statement is attached as **Exhibit “B.”**

17           7.       A true and correct copy of YouTube’s “Vaccine misinformation policy”  
18 is attached as **Exhibit “C.”**

19           8.       A true and correct copy of YouTube’s “COVID-19 medical  
20 misinformation policy” is attached as **Exhibit “D.”**

21           9.       For ease of reference, I refer to the policies reflected in Exhibits C and D  
22 as the “medical misinformation policies.”

23           10.      During the past few election cycles, YouTube has played an especially  
24 important role in the political process. Attached to this declaration as **Exhibit “E”** is a  
25 true and correct copy of an article written by YouTube’s director of advertiser  
26 marketing, Kate Stanford, in March 2016 titled “How Political Ads and Video  
27 Content Influence Voter Opinion” which discussed that development.

1           11. Mr. Kennedy has repeatedly asked Google to stop applying its  
2 misinformation policies to censor him during the presidential campaign. It has  
3 refused. That led to the filing of this case.

4           12. A similar censorship case was filed in Louisiana by two state attorneys  
5 general, *Missouri et al. v. Biden et al.*, No. 3:22-cv-01213-TAD-KDM (the “State AG  
6 Censorship Case”). On July 4, Judge Terry Doughty issued a lengthy decision that  
7 enjoins federal government officials from coercing technology companies to censor  
8 the government’s critics. The injunction does not bind the technology companies  
9 themselves, though, and thus does not prohibit Google from continuing to censor Mr.  
10 Kennedy based on the misinformation policies.

11           13. The government appealed the decision in the State AG Censorship Case  
12 to the Fifth Circuit Court of Appeals. It will hear oral argument in the case this week.

13           14. I have reviewed much of the evidence that was produced during the State  
14 AG Censorship Case, including documents that were produced and deposition  
15 testimony that was taken in that case. The evidence sheds light on the partnership that  
16 Google and Executive Branch officials developed to remove speech from people like  
17 Mr. Kennedy who disagree with Executive Branch officials about COVID-19,  
18 vaccines, and other matters of public concern.

19           15. Attached to this declaration as **Exhibit “F”** is a true and correct copy of  
20 an email sent by White House official Rob Flaherty to Google executives, among  
21 other people, on April 22, 2021, which was produced in the State AG Censorship  
22 Case.

23           16. Attached to this declaration as **Exhibit “G”** is a true and correct copy of  
24 sworn discovery responses provided by the Executive Branch officials in the State AG  
25 Censorship Case, which were signed by Max Lesko, Chief of Staff in the Office of the  
26 Surgeon General (“OSG”) on December 16, 2022.

27           17. Attached to this declaration as **Exhibit “H”** is a true and correct copy of  
28

1 excerpts from the deposition of Eric Waldo, an OSG official, which was taken in the  
2 State AG Censorship Case.

3 18. Attached to this declaration as **Exhibit “I”** is a true and correct copy of  
4 the document that was marked as Exhibit 8 to Waldo’s deposition transcript.

5 20. Attached to this declaration as **Exhibit “J”** is a true and correct copy of  
6 the document that was marked as Exhibit 31 to Waldo’s deposition transcript.

7 22. Attached to this declaration as **Exhibit “K”** is a true and correct copy of  
8 the document that was marked as Exhibit 47 to Waldo’s deposition transcript.

9 23. Attached to this declaration as **Exhibit “L”** is a true and correct copy of  
10 excerpts from the deposition of Carol Crawford, an official from the Centers for  
11 Disease Control, which was taken in the State AG Censorship Case.

12 24. Attached to this declaration as **Exhibit “M”** is a true and correct copy of  
13 the document that was marked as Exhibit 40 to Crawford’s deposition transcript.

14 25. Attached to this declaration as **Exhibit “N”** is a true and correct copy of  
15 the document that was marked as Exhibit 43 to Crawford’s deposition transcript.

16 26. Attached to this declaration as **Exhibit “O”** is a true and correct copy of  
17 excerpts from the deposition of Elvis Chan, an agent of Federal Bureau of  
18 Investigation, which was taken in the State AG Censorship Case.

19 27. Attached to this declaration as **Exhibit “P”** is a true and correct copy of  
20 an email exchange between Mr. Flaherty, the White House official, and Twitter  
21 executives about Mr. Kennedy that occurred between January 22 and 23, 2021.

22 28. To my knowledge, neither Google nor YouTube were subpoenaed in the  
23 State AG Censorship Case. None of their executives were deposed. No White House  
24 officials were deposed in the State AG Censorship Case either.

25 29. Although we have already obtained evidence that, in my opinion, is  
26 sufficient to satisfy the state action doctrine with respect to Google’s enforcement of  
27 the medical misinformation policies, if given the chance we would seek additional  
28



1 discovery in this case and in connection with Mr. Kennedy's request for issuance of a  
2 preliminary injunction. The discovery would be targeted to Google and would include:

3 (a) Communications between Google/YouTube executives and Executive Branch  
4 officials (especially White House, Surgeon General and CDC officials) about the new  
5 COVID-19 misinformation policies adopted by Google during the summer of 2021;  
6 (b) Communications between Google/YouTube executives and Executive Branch  
7 officials about alleged misinformation spread by Mr. Kennedy; (c) Communications  
8 between Google/ YouTube executives and Executive Branch officials about removing  
9 any videos of Mr. Kennedy from YouTube; and (d) Communications between  
10 Google/YouTube executives and Executive Branch officials about Mr. Kennedy's  
11 speech at the NHIOP and his interview with Jordan Peterson.

12 30. We would also seek discovery about the creation of YouTube's original  
13 COVID-19 misinformation policy, which was first posted in May 2020. And we  
14 would seek information about the partnership between Google and the White House  
15 about suppressing speech about the COVID-19 vaccines specifically, including  
16 documents regarding an April 21, 2021, meeting between Google executives and  
17 White House officials that was described in Judge Doughty's decision in the State AG  
18 Censorship Case. I could not obtain a copy of those emails because they were filed  
19 under seal.

20 31. I believe this discovery could be completed within the next month.

21 32. Mr. Kennedy's presidential campaign has been gaining momentum,  
22 having raised millions of dollars, and generated impressive poll numbers, despite his  
23 being ignored by much of the mainstream media and disavowed by the Democratic  
24 National Committee and most Democratic members of Congress (who tried to censor  
25 his testimony at a Congressional hearing on censorship). The campaign is expected to  
26 heat up after Labor Day. That is why Mr. Kennedy is seeking preliminary injunctive  
27 relief now.



1        33. Defendants' agent will be served with the summons and complaint this  
2 week. My office separately served the registered agent with the complaint last week.  
3 The case has also received significant attention in the press. Thus, I believe that  
4 Defendants are prepared to litigate the case and can do so on an expedited basis.  
5 Although Defendants have not yet appeared in the case, my office will personally  
6 serve Defendants' registered agent with copies of the application for a temporary  
7 restraining order and all supporting papers this week.

8        34. I understand that the Court usually hears law and motion matters on  
9 Wednesdays. I will be traveling during the week of August 28. I will also be attending  
10 an oral argument in the Ninth Circuit Court of Appeals on September 14. I could  
11 appear for argument on Mr. Kennedy's application for preliminary relief on August  
12 23, September 6, or September 13, or any other Wednesday during September.

13        Under penalty of perjury, under the laws of the United States of America, I  
14 declare that the foregoing is true and correct. Executed this 9th day of August 2023, at  
15 Pasadena, California.

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18 Scott J. Street  
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## EXHIBIT A



## NEWS

Politics

(<https://nhjournal.com/category/politics/>).

## RFK, Jr's NHIOP Speech Banned From YouTube

Posted to Politics (<https://nhjournal.com/category/politics/>), March 06, 2023 by Michael Graham

(<https://nhjournal.com/author/michaelgraham/>).

Jason Cote has a simple mission at Manchester Public TV. “Proudly bringing MANCHESTER to your television: open government, free expression, education, arts, activities,” as it says on the station’s website

(<https://www.manchestertv.org/>).

For Cote, the station’s executive director, achieving that goal often involves broadcasting political speeches from the New Hampshire Institute of Politics. For example, MPTS shared New Hampshire Journal’s GOP candidate debates with viewers last year.

But when the station tried to post its video of Robert F. Kennedy, Jr’s NHIOP speech on its YouTube channel, something happened Cote had never experienced before.

“YouTube will not allow us to post the video because of controversial vaccination content,” Cote told NHJournal.

“MPTS has recorded more than 100 wonderful NHIOP events, and I cannot recall this happening before.

“First time for everything, I guess,” he added.

According to a message from YouTube sent to Cote, the media platform declared RFK, Jr’s speech “medical misinformation” and would not allow it to be posted.

“YouTube doesn’t allow content that poses a serious risk of egregious harm by spreading medical misinformation about currently administered vaccines that are approved and confirmed to be safe and effective by local health authorities and by the World Health Organization,” the YouTube message read.

A spokesperson for YouTube responded to NHJournal’s requests with assurances a statement would be forthcoming, but it failed to respond by late Monday night.

NHIOP Executive Director Neil Levesque was puzzled by YouTube’s decision.

“This was a political and public policy speech that YouTube has censored.”

RFK, Jr. is well known for advocating views often labeled “conspiracy theories,” including his suggestion that childhood diseases like autism are linked to vaccines. He also spread the debunked conspiracy

(<https://clevelandmagazine.com/in-the-cle/politics/articles/robert-f-kennedy-jr-nut-job>), that the 2004 presidential election was stolen from John Kerry.

✓ His views on vaccines have gotten him banned from social media in the past. In 2021, he was blocked from Instagram

**CONTINUE >**

However unorthodox his views, RFK, Jr. was still welcomed by some of the biggest names in the New Hampshire Democratic Party, including state party chair Ray Buckley and Senate Minority Leader Donna Soucy (D-Manchester). If they could sit and hear what the possible 2024 presidential candidate had to say, why not voters across the state, Cote asked.

“We only try to help the Manchester citizens be the most educated about all views and opinions that we can.”

More from New Hampshire Journal



## **EXHIBIT B**



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# RFK Jr. Suing Over YouTube Ban Of NH IOP Speech

Kennedy spoke of his environmental causes and belief that the expanded regime of childhood vaccines was contributing to autism.



New Hampshire Journal, News Partner

Posted Wed, Mar 8, 2023 at 8:41 pm ET

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An attorney for Robert F. Kennedy Jr. tells NHJournal the potential 2024 presidential candidate plans to sue YouTube over its decision to ban his recent speech at the prestigious New Hampshire Institute of Politics (NHIO) from its video platform. (NH Journal)

**By Michael Graham, NH Journal**

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An attorney for Robert F. Kennedy Jr. tells NHJournal the potential 2024 presidential candidate plans to sue YouTube over its [decision to ban his recent speech](#) at the prestigious New Hampshire Institute of Politics (NHIOP) from its video platform.

“We will be filing suit,” said John Howard, a legal adviser to Kennedy.

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Kennedy spoke at the NHIOP last Friday, recounting his efforts on behalf of environmental causes and his suspicions regarding the expanded regime of childhood vaccines he suggests are linked to increased cases of autism in children.

The Institute, based on the campus of St. Anselm College, is a must-stop destination for politicians considering a run for the White House. Asked by NHJournal if he had any plans to challenge President Joe Biden in the Democratic primary, Kennedy said [“I’m thinking about it.”](#)

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Manchester Public Television often broadcasts political speeches from the NHIOP venue to its viewers, as well as posts them on the station's YouTube channel. The possibility of a Kennedy challenge to President Joe Biden is particularly newsworthy given the DNC's decision to strip New Hampshire of its First in the Nation primary status.

But when MPTS executive director Jason Cote attempted to post RFK's remarks, he received a message that the content was being blocked.

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"YouTube will not allow us to post the video because of controversial vaccination content," Cote told NHJournal. "MPTS has recorded more than 100 wonderful NHIOP events, and I cannot recall this happening before.

"First time for everything, I guess," he added.

On Wednesday, a spokesperson for YouTube confirmed to NHJournal the speech was banned from the platform.

"We removed the content for violating our policies on [COVID-19 vaccine misinformation](#). Our policies are enforced for everyone, regardless of the speaker's political views," the spokesperson said in a statement. "While we do allow content with educational, documentary, scientific or artistic context,

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such as news reports, the content we removed from this channel was raw footage and did not provide sufficient context.”

Kennedy’s attorney said they are taking the matter to court.

“Justice Anthony Kennedy said the right to think is the beginning of freedom, and speech must be protected from the government because speech is the beginning of thought,” said Howard. “We should keep those principles in mind. YouTube may not be the government, but its actions have all the signs of government censorship. The people of New Hampshire—all Americans, really—deserve to hear from people who seek their vote.”

Alphabet, the parent company of YouTube and Google, is already under scrutiny from Congress over its uneven — some say politically biased — application of content restrictions on its platforms. Alphabet CEO [Sundar Pichai](#) has been [subpoenaed by the House Judiciary Committee](#) to answer accusations regarding “the federal government’s reported collusion with Big Tech to suppress free speech.”

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While Kennedy is viewed as a longshot presidential candidate, he garnered praise from Granite State Democrats for intervening on behalf of the state’s FITN primary. On the eve of the Democratic National Committee’s vote to strip New Hampshire of its place at the front of the 2024 line, Kennedy published an [open letter to the DNC](#) urging it “not to interfere in New Hampshire’s plan to hold the nation’s first primary.

“My Uncle Jack spoke to voters in Dover on the eve of the 1960 New Hampshire primary. He said that ‘We Democrats realize that the days when presidential candidates can be nominated in smoke-filled rooms, by political leaders and party bosses, have forever passed from the scene.’ He said ‘that no man has

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won a national election who was unwilling to test his candidacy with the people.'

"I echo those thoughts," Kennedy wrote.

Some of New Hampshire's top Democrats turned out for his NHIOP speech, including state party chairman Ray Buckley and state Senate minority leader Donna Soucy (D-Manchester).

Best-selling author Marianne Williamson has announced her candidacy in the 2024 Democratic presidential primary. She is scheduled to make campaign appearances across the Granite State [between March 8 -13](#).

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Polls consistently show a majority of Granite State Democrats would prefer to back someone other than Biden as their party's nominee. And while no prominent local Democrats have endorsed Kennedy or Williamson, some have expressed dissatisfaction with Biden.

Asked if he wants Biden to run again, former N.H. Speaker of the House Steve Shurtleff (D-Penacook) told the AP, "In my heart of hearts, no. I think a lot of people just don't want to say it."

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*This story was originally published by the NH Journal, an online news publication dedicated to providing fair, unbiased reporting on, and analysis of, political news of interest to New Hampshire. For more stories from the NH Journal, visit [NHJournal.com](https://www.nhjournal.com).*

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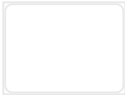
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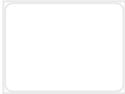
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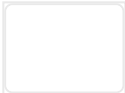
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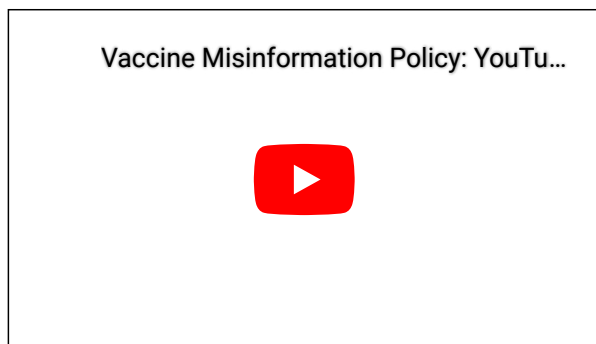
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## EXHIBIT C

## Vaccine misinformation policy



YouTube doesn't allow content that poses a serious risk of egregious harm by spreading medical misinformation about currently administered vaccines that are approved and confirmed to be safe and effective by local health authorities and by the World Health Organization (WHO). This is limited to content that contradicts local health authorities' or the WHO's guidance on vaccine safety, efficacy, and ingredients.

### What this policy means for you

#### If you're posting content

Don't post content on YouTube if it includes harmful misinformation about currently approved and administered vaccines on any of the following:

- **Vaccine safety:** content alleging that vaccines cause chronic side effects, outside of rare side effects that are recognized by health authorities
- **Efficacy of vaccines:** content claiming that vaccines do not reduce transmission or contraction of disease
- **Ingredients in vaccines:** content misrepresenting the substances contained in vaccines

This policy applies to videos, video descriptions, comments, live streams, and any other YouTube product or feature. Keep in mind that this isn't a complete list. Please note these policies also apply to [external links](#) in your content. This can include clickable URLs, verbally directing users to other sites in video, as well as other forms.

### Examples

Here are some examples of content that's not allowed on YouTube:

- Claims that vaccines cause chronic side effects such as:
  - Cancer
  - Diabetes
  - Other chronic side effects
- Claims that vaccines do not reduce risk of contracting illness
- Claims that vaccines contain substances that are not on the vaccine ingredient list, such as biological matter from fetuses (e.g. fetal tissue, fetal cell lines) or animal byproducts
- Claims that vaccines contain substances or devices meant to track or identify those who've received them
- Claims that vaccines alter a person's genetic makeup
- Claims that the MMR vaccine causes autism
- Claims that vaccines are part of a depopulation agenda

- Claims that the flu vaccine causes chronic side effects such as infertility
- Claims that the HPV vaccine causes chronic side effects such as paralysis

## Educational, scientific, artistic, or testimonial content

YouTube may allow content that violates the misinformation policies noted on this page if that content includes additional context in the video, audio, title, or description. This is not a pass to promote misinformation. Additional context may include countervailing views from local health authorities or medical experts. We may also make exceptions if the purpose of the content is to condemn, dispute, or satirize misinformation that violates our policies. We may also make exceptions for content showing an open public forum, like a protest or public hearing, provided the content does not aim to promote misinformation that violates our policies.

YouTube also believes people should be able to share their own experiences, including personal experiences with vaccinations. This means we may make exceptions for content in which creators describe firsthand experiences from themselves or their family. At the same time, we recognize there is a difference between sharing personal experiences and promoting misinformation about vaccines. To address this balance, we will still remove content or channels if they include other policy violations or demonstrate a pattern of promoting vaccine misinformation.

## What happens if content violates this policy

If your content violates this policy, we'll remove the content and send you an email to let you know. If we can't verify that a link you post is safe, we may remove the link.

If this is your first time violating our Community Guidelines, you'll likely get a warning with no penalty to your channel. If it's not, we may issue a strike against your channel. If you get 3 strikes within 90 days, your channel will be terminated. You can learn more about [our strikes system here](#).

We may terminate your channel or account for repeated violations of the Community Guidelines or Terms of Service. We may also terminate your channel or account after a single case of severe abuse, or when the channel is dedicated to a policy violation. You can learn more about [channel or account terminations here](#).

## Additional resources

More information on vaccines, including their safety and efficacy, can be found below.

### Health Authority Vaccine Information:

- [Centers for Disease Control and Prevention \(CDC\)](#) (US)
- [European Vaccination Information Portal](#) (EU)
- [National Health Service](#) (UK)
- [World Health Organization vaccine safety](#) (Global)
- [World Health Organization vaccine preventable diseases](#) (Global)

### Additional Vaccine Information:

- [American Academy of Pediatrics](#) (US)
- [GAVI, the Vaccine Alliance](#) (Global)
- [UNICEF](#) (Global)



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## **EXHIBIT D**

## COVID-19 medical misinformation policy

The safety of our creators, viewers, and partners is our highest priority. We look to each of you to help us protect this unique and vibrant community. It's important you understand our Community Guidelines, and the role they play in our shared responsibility to keep YouTube safe. **Take the time to carefully read the policy below.** You can also check out [this page](#) for a full list of our guidelines.

YouTube doesn't allow content about COVID-19 that poses a serious risk of egregious harm.

YouTube doesn't allow content that spreads medical misinformation that contradicts local health authorities' (LHA) or the World Health Organization's (WHO) medical information about COVID-19. This is limited to content that contradicts WHO or local health authorities' guidance on:

- Treatment
- Prevention
- Diagnosis
- Transmission
- The existence of COVID-19

**Note:** YouTube's policies on COVID-19 are subject to change in response to changes to global or local health authorities' guidance on the virus. There may be a delay between new LHA/WHO guidance and policy updates given the frequency with which this guidance changes, and our policies may not cover all LHA/WHO guidance related to COVID-19.

Our COVID-19 policies were first published on May 20, 2020.

## What this policy means for you

### If you're posting content

Don't post content on YouTube if it includes any of the following:

#### Treatment misinformation:

- Content that encourages the use of home remedies, prayer, or rituals in place of medical treatment such as consulting a doctor or going to the hospital
- Content that claims that there's a guaranteed cure for COVID-19
- Content that recommends use of Ivermectin or Hydroxychloroquine for the treatment of COVID-19
- Claims that Hydroxychloroquine is an effective treatment for COVID-19
- Categorical claims that Ivermectin is an effective treatment for COVID-19
- Claims that Ivermectin and Hydroxychloroquine are safe to use in the prevention of COVID-19
- Other content that discourages people from consulting a medical professional or seeking medical advice

**Prevention misinformation:** Content that promotes prevention methods that contradict local health authorities or WHO.

- Claims that there is a guaranteed prevention method for COVID-19
  - Claims that any medication or vaccination is a guaranteed prevention method for COVID-19
- Content that recommends use of Ivermectin or Hydroxychloroquine for the prevention of COVID-19
- Claims that Ivermectin and Hydroxychloroquine are safe to use in the prevention of COVID-19
- Claims about COVID-19 vaccinations that contradict expert consensus from local health authorities or WHO

- Claims that an approved COVID-19 vaccine will cause death, infertility, miscarriage, autism, or contraction of other infectious diseases
- Claims that an approved COVID-19 vaccine will contain substances that are not on the vaccine ingredient list, such as biological matter from fetuses (e.g. fetal tissue, fetal cell lines) or animal products
- Claims that an approved COVID-19 vaccine will contain substances or devices meant to track or identify those who've received it
- Claims that COVID-19 vaccines will make people who receive them magnetic
- Claims that an approved COVID-19 vaccine will alter a person's genetic makeup
- Claims that COVID-19 vaccines do not reduce risk of serious illness or death
- Claims that any vaccine causes contraction of COVID-19
- Claims that a specific population will be required (by any entity except for a government) to take part in vaccine trials or receive the vaccine first
- Content that promotes the use of unapproved or homemade COVID-19 vaccines
- Instructions to counterfeit vaccine certificates, or offers of sale for such documents

**Diagnostic misinformation:** Content that promotes diagnostic information that contradicts local health authorities or WHO.

- Claims that approved COVID-19 tests are dangerous or cause negative physical health effects
- Claims that approved COVID-19 tests cannot diagnose COVID-19

**Transmission misinformation:** Content that promotes transmission information that contradicts local health authorities or WHO.

- Content that claims that COVID-19 is not caused by a viral infection
- Content that claims COVID-19 is not contagious
- Content that claims that COVID-19 cannot spread in certain climates or geographies
- Content that claims that any group or individual has immunity to the virus or cannot transmit the virus

#### **Content that denies the existence of COVID-19:**

- Denial that COVID-19 exists
- Claims that people have not died or gotten sick from COVID-19
- Claims that the death rate of COVID-19 is equal to or less than that of the common cold or seasonal flu
- Claims that COVID-19 is equal to or less transmissible than the common cold or seasonal flu
- Claims that the symptoms of COVID-19 are never severe

This policy applies to videos, video descriptions, comments, live streams, and any other YouTube product or feature. Keep in mind that this isn't a complete list. Please note these policies also apply to [external links](#) in your content. This can include clickable URLs, verbally directing users to other sites in video, as well as other forms.

## Examples

Here are some examples of content that's not allowed on YouTube:

- Denial that COVID-19 exists
- Claims that people have not died from COVID-19
- Claims that any vaccine is a guaranteed prevention method for COVID-19
- Claims that a specific treatment or medicine is a guaranteed cure for COVID-19
- Claims that hydroxychloroquine saves people from COVID-19
- Promotion of MMS (Miracle Mineral Solution) for the treatment of COVID-19

- Claims that certain people have immunity to COVID-19 due to their race or nationality
- Encouraging taking home remedies instead of getting medical treatment when sick
- Discouraging people from consulting a medical professional if they're sick
- Content that claims that holding your breath can be used as a diagnostic test for COVID-19
- Videos alleging that if you avoid Asian food, you won't get the coronavirus
- Videos alleging that setting off fireworks can clean the air of the virus and will prevent the spread of the virus
- Claims that COVID-19 is caused by radiation from 5G networks
- Videos alleging that the COVID-19 test is the cause of the virus
- Claims that countries with hot climates will not experience the spread of the virus
- Claims that COVID-19 vaccines kill people who receive them
- Claims that COVID-19 vaccines are a means of population reduction
- Videos claiming that COVID-19 vaccines contain fetal tissue
- Claims that the flu vaccine causes contraction of COVID-19
- Claims that the flu is more contagious than COVID-19
- Claims that COVID-19 vaccines cause contraction of other infectious diseases or makes people more vulnerable to contraction of other infectious diseases
- Claims that COVID-19 vaccines contain a microchip or tracking device
- Claims that achieving herd immunity through natural infection is safer than vaccinating the population
- Claims that COVID-19 never causes serious symptoms or hospitalization
- Claims that the death rate from the seasonal flu is higher than the death rate of COVID-19
- Claims that people are immune to the virus based on their race
- Claims that children cannot or do not contract COVID-19
- Claims that there have not been cases or deaths in countries where cases or deaths have been confirmed by local health authorities or the WHO

## Educational, documentary, scientific or artistic content

We may allow content that violates the misinformation policies noted on this page if that content includes additional context in the video, audio, title, or description. This is not a pass to promote misinformation. Additional context may include countervailing views from local health authorities or medical experts. We may also make exceptions if the purpose of the content is to condemn, dispute, or satirize misinformation that violates our policies. We may also make exceptions for content showing an open public forum, like a protest or public hearing, provided the content does not aim to promote misinformation that violates our policies.

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If this is your first time violating our Community Guidelines, you'll likely get a warning with no penalty to your channel. If it's not, we may issue a strike against your channel. If you get 3 strikes within 90 days, your channel will be terminated. You can learn more about [our strikes system here](#).

We may terminate your channel or account for repeated violations of the Community Guidelines or Terms of Service. We may also terminate your channel or account after a single case of severe abuse, or when the channel is dedicated to a policy violation. You can learn more about [channel or account terminations here](#).

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## **EXHIBIT E**

A woman with blonde hair is looking down at a ballot box. The ballot box has a graphic of the American flag and the word "VOTE" partially visible. The background is blurred, showing other people in a public space.

# How Political Ads and Video Content Influence Voter Opinion

Written by  
Kate Stanford

Published  
March 2016

Topics  
Video, Government &  
Education, Advertising

There are so many major moments that lead up to Election Day: debates, caucuses, primaries. But the moments that matter most won't make major headlines. They'll happen quietly and quickly in micro-moments, when undecided voters become decided voters, often by going online.

think with **Google**



Voter decisions used to be made in living rooms, in front of televisions. Today, they're increasingly made in [micro-moments](#), on mobile devices. Election micro-moments happen when voters turn to a device to learn about a candidate, event, or issue.

Today's voters want a quick way to catch up on the latest elections buzz and they've found it in online video. Since April 2015, people have watched more than 110 million hours of candidate- and issues-related content on YouTube. That's 100X the amount of time it would take to watch all content ever aired on CNN, C-Span, MSNBC, and Fox News combined.<sup>1</sup> Whether voters are looking for a debate sound bite, instructions on how to vote, or Stephen Colbert's latest burn, they turn to YouTube.

Since April 2015, people have watched more than 110 million hours of candidate- and issues-related content on YouTube. That's 100X the amount of time it would take to watch all content ever aired on CNN, C-Span, MSNBC, and Fox News combined.

In fact, searches for election-related content on YouTube have grown by nearly 4X since presidential candidates started making their announcements last April.<sup>2</sup> And voters of all ages—not just young people—turn to YouTube in their [I-want-to-know moments](#). While 59% of people who turn to online video to learn more about the candidates are under the age of 35, one in four are over the age of 45.<sup>3</sup>

So, how can candidates win these micro-moments to win in November? As the season heats up, here are three ways all candidates—whether they're running for a local seat, Congress, or the presidency—can meet voters in their micro-moments:






## 1. Be there: What online video trends reveal about voter micro-moments

[Being there](#) for voters in critical micro-moments means knowing what they're looking for. To get a map of voter wants and needs when it comes to video, we use [Google Trends](#) and [filter by YouTube](#).

Here's a look at the trending topics since the presidential candidates launched their campaigns in April 2015 and how much search volume has grown on those topics.

Source: Google data, U.S., YouTube search interest in top issues, April 2015–February 2016.

### Top Video Search Trends for Political Issues

| Political Issue   | Increase in searches since April 2015 |
|---|---------------------------------------|
|  Refugees      | +224%                                 |
|  Immigration   | +51%                                  |
|  Gun Control | +27%                                  |
|  Economy     | +22%                                  |
|  Health Care | +10%                                  |

As you look at what voters want, ask yourself: Do I have the video content to answer their queries? Are my videos showing up for voters experiencing micro-moments on YouTube?

In Nevada, Hillary Clinton's campaign answered "yes" to both of those questions. First, her campaign created a moving video ad about the second issue on the list above: immigration. Then, the campaign used standard targeting features to try to reach voters who might be interested in the issue:



Thanks to the [TrueView](#) "skip" button, campaigns can get immediate feedback: Did viewers skip the ad, or choose to watch it? Based on that feedback, campaigns are able to adjust TrueView ads midflight. As [The Wall Street Journal noted recently](#) from the perspective of the Ted Cruz campaign, TrueView ads "offer the closest parallel to the power to persuade voters offered by classic TV ads, but allow for much better targeting."

## 2. Be useful and quick: How candidates' video content helps when micro-moments happen

Timing is everything when it comes to micro-moments. Voters don't just want the right content—they want it right now. While micro-moments can happen at any time, we see spikes in interest around key decision-making moments. Take the Iowa caucuses, for example, when voters went to YouTube to get informed: Watch Time Trends for Videos Related to the Iowa Caucuses

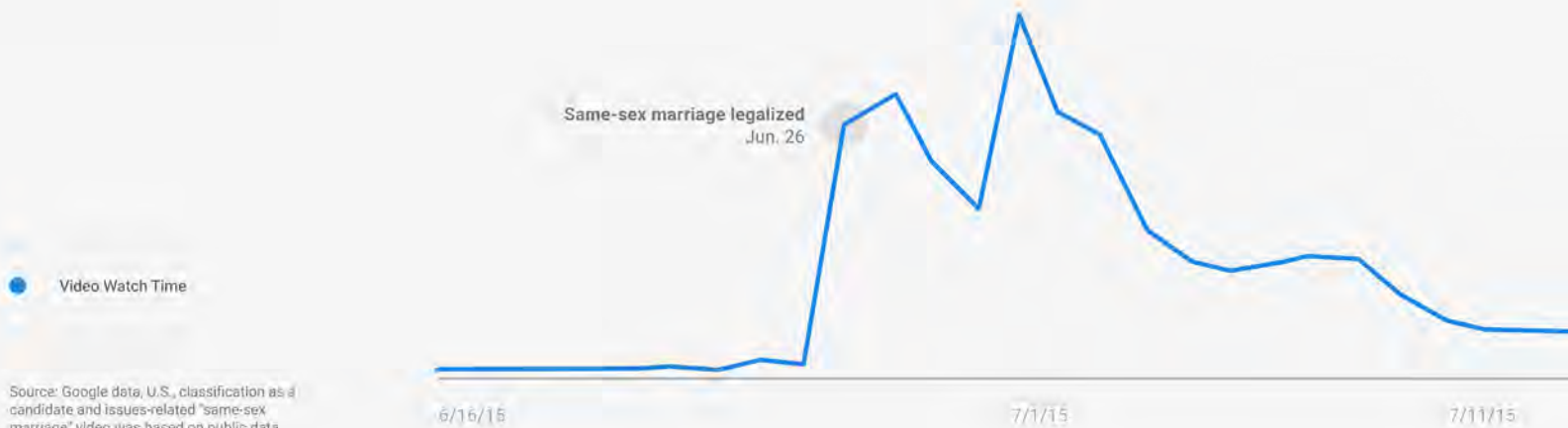
### Watch Time Trends for Videos Related to the Iowa Caucuses



The chart above shows watch time before, during, and after the Iowa caucuses. The first major spike was driven by people coming to YouTube to catch up on video of recent debates and town halls. The second was driven by people watching Donald Trump's caucus speech. Both are micro-moments experienced by voters en masse.

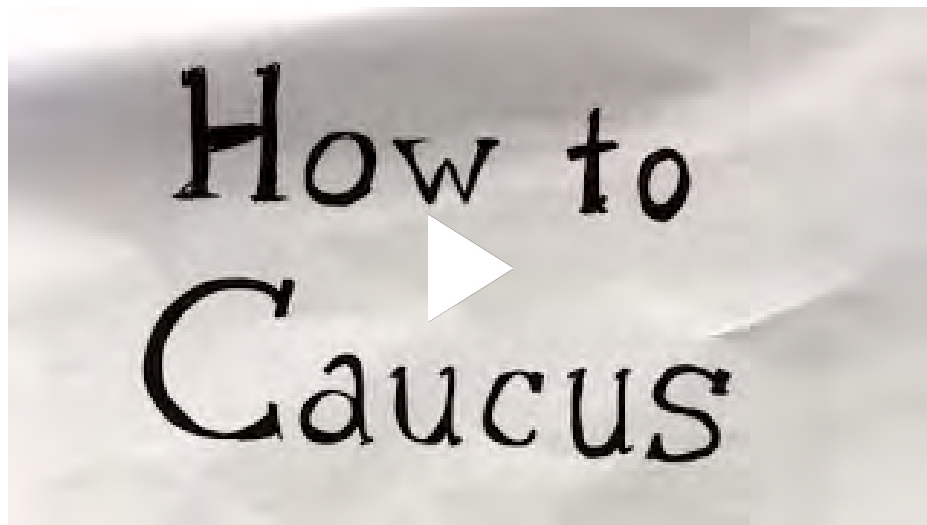
But it's not just political events, like debates and caucuses, that are shaping election watch time trends. Timely, cultural conversations spark voter micro-moments, too. For example, the week after same-sex marriage was legalized, watch time for related videos grew by 23X compared to the average of the three weeks prior: Watch Time Trends for Videos Related to Same-Sex Marriage

### Watch Time Trends for Videos Related to Same-Sex Marriage



Source: Google data, U.S., classification as a candidate and issues-related "same-sex marriage" video was based on public data such as headlines, tags, etc., and may not account for every such video available on YouTube, June 2015–July 2015.

Some candidates are getting out in front of these micro-moments with event- or issue-related content, combined with more targeted ads. In an effort to get out the vote, Donald Trump's "[Find Your Iowa Caucus Location](#)" video and Bernie Sanders' "[How to Caucus in Iowa](#)" explained to Iowans how to register and caucus:



The Trump and Sanders campaigns knew voters would head to YouTube to ask "how to caucus" ahead of Iowa, and they were ready with two simple videos that offered step-by-step instructions. Talk about a decision-making moment: These videos could have meant the difference between showing up for your candidate on caucus day or staying home.

### 3. Be Influential: Who influences voter opinion in micro-moments

We've talked about understanding what voters are looking for in election micro-moments and when those moments occur most. But who carries the most sway in these moments? More than half of daily YouTube users ages 18–49 say their personal opinions (including politics) have been influenced by YouTube creators.<sup>4</sup>

Savvy politicians have taken advantage of YouTube creators' influence, taking interviews with them or partnering on videos to share in the dialogue. [Six YouTube creators](#) interviewed President Obama after his last two State of the Union addresses. And this election season, politicians are acting more like creators themselves. For example, Marco Rubio published several videos that are more in the style of creator Casey Neistat's "[Ask Me Anything](#)" videos than typical campaign TV ads:



Creators are, ultimately, master listeners. The most influential creators on YouTube listen for audience questions and create content that answers them. The most influential politicians on YouTube do, too.

At a time when politicians and pundits are asking, "[Do Political TV Ads Still Work?](#)," YouTube trends show that online video is now table stakes for political campaigns. In our connected world, video works hardest when it answers a need or want that voters experience in election micro-moments.

These micro-moments might occur before, during, or after a debate or in reaction to a cultural event. They might happen when voters need a question answered fast, like "how to caucus in Iowa." Politicians can have extra influence in micro-moments by working alongside creators or taking a page out of their playbooks, as Marco Rubio did.

Micro-moments are shaping the electorate in 2016. I, for one, can't wait to find out which candidate won the most micro-moments—who met the most voters in their decision-making moments on YouTube. We'll find out on November 8.

*Dive into the data to learn more about voter micro-moments with [The Presidential Elections on YouTube - Trends Report 2016](#).*

## Sources

- 1 Google data, U.S., classification as election "candidates" and "issues" was based on public data such as headlines and tags, and may not account for every such video available on YouTube. Content broadcast by CNN, C-SPAN, Fox News, and MSNBC was estimated by adding the number of days since their first broadcast. April 2015–February 2016.
- 2 Google data, U.S., YouTube search interest related to election candidates and issues, April 2015–February 2016.
- 3 Google/Ipsos Connect, Google Elections Omnibus, U.S. adults 18+, n=2,022, January 2016.
- 4 Google/Ipsos Connect, "The YouTube Generation" study", U.S., 18–49 year-olds, n=1,125, November 2015



## **EXHIBIT F**

**From:** Flaherty, Rob EOP/WHO [REDACTED]  
**Sent:** 4/22/2021 12:05:16 AM  
**To:** [REDACTED]@google.com; [REDACTED]@google.com; [REDACTED]@google.com; [REDACTED]@google.com; [REDACTED]@google.com; [REDACTED]@google.com  
**CC:** Slavitt, Andrew M. EOP/WHO [REDACTED]@who.eop.gov; Humphrey, Clarke EOP/WHO [REDACTED]@who.eop.gov; Fitzpatrick, Kelsey V. EOP/WHO [REDACTED]@who.eop.gov  
**Subject:** Following Up on Today's Conversation

All – Thanks again for the conversation today.

We'll look out for the top trends that you've seen in terms of misinformation around the vaccine.

To recap: As we move away from a supply problem toward a demand problem, we remain concerned that Youtube is "funneling" people into hesitancy and intensifying people's hesitancy. We certainly recognize that removing content that is unfavorable to the cause of increasing vaccine adoption is not a realistic – or even good – solution. But we want to be sure that you have a handle on vaccine hesitancy generally and are working toward making the problem better. This is a concern that is shared at the highest (and I mean highest) levels of the WH, so we'd like to continue a good-faith dialogue about what is going on under the hood here. I'm the one on the hook for reporting out.

Just before we were meeting, [this article from BuzzFeed popped](#), highlighting the Youtube misinformation that is spreading through the Vietnamese community. I think this brings up a question that I had in our first meeting about your capabilities around misinformation in non-english-speaking communities. Clearly, more work to be done here. Would love to get some insights from you on how you are tackling this problem across all languages – how your enforcement has differed in languages and what your road map to improvement is.

A couple of other things it would be good to have from you all:

- As mentioned up top, the top trends that you're seeing in terms of misinformation/hesitancy inducing content (Stanford has mentioned that it's recently Vaccine Passports and J&J pause-related stuff, but I'm not sure if that reflects what you're seeing)
- A deeper dive on reduction and its effectiveness. It's helpful that you mentioned that watch time is your key metric. I believe you said you reduced watch time by 70% on "borderline" content, which is impressive. Obviously, the term "borderline" is moveable, but taking it for what it is: How does that track with vaccine-related content specifically (removing the "UFO stuff"). What has the comparative reduction in watch time on "borderline" vaccine topics been after your interventions? And what has the increase in watch time been on authoritative information?
- I appreciated your unequivocal response that you are not recommending anti-vaccine content and you are lifting authoritative information in both search and recommendations to all audiences. Related to the second bullet: to what extent have your ranking interventions been effective there? And, perhaps more critically, to what degree is content from people who have been given a "strike" still being recommended and shown in prominent search positions?
- I feel like I am not coming away with a very clear picture of how you're measuring the effectiveness of uplifting authoritative information. I obviously buy the theory – but how did you arrive on info-panels as the best intervention? And to what extent are people clicking through after exposure to vaccine-hesitant content? What are you doing mechanically to boost the authoritative information? When you have relevant influencers speak to experts, I imagine (hope?) it's not just putting the content out there and that you're recommending it to people for whom it would be most relevant. How does that work?
- What are the general vectors by which people see the "borderline" content – or really just vaccine-skeptical content? Is it largely through recommendations? Search?

We are excited to continuing partnering with you on this work as we have via [REDACTED] but we want to make sure that the work extends to the broader problem. Needless to say, in a couple of weeks when we're having trouble

getting people to get vaccinated, we'll be in the barrel together here. We've worked with a number of platform partners to track down similar information based on internal data, including partners of similar scale. I am feeling a bit like I don't have a full sense of the picture here. We speak with other platforms on a semi-regular basis. We'd love to get in this habit with you. Perhaps bi-weekly?

Looking forward to more conversation.

-Rob

**Rob Flaherty**  
Director of Digital Strategy  
The White House  
Cell: [REDACTED]

## EXHIBIT G



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**OSG.** Subject to and without waiving any of the foregoing objections, and based on a reasonable inquiry under the circumstances of abbreviated, expedited discovery, OSG responds that the following meetings took place with the Social-Media Platforms relating to Misinformation:

- On May 25, 2021, from 4:30 to 5:00 pm ET, Dr. Vivek Murthy from OSG and Andy Slavitt from the White House met remotely with Nick Clegg from Facebook. The purpose of the call was to introduce Dr. Murthy to Mr. Clegg. Misinformation may have been discussed.
- On July 12, 2021, from 3:00 pm to 3:30 pm ET, Eric Waldo from OSG met remotely with Lauren Culbertson and Todd Boyle from Twitter. Kyla Fullenwider from U.S. Digital Response was invited and may have also attended. The meeting provided notice of the upcoming OSG Advisory and a high-level view of what issues OSG would be prioritizing in the Advisory.
- On July 14, 2021, from 3:00 pm to 3:30 pm ET, Eric Waldo from OSG met remotely with Kevin Kane from YouTube, Jan Antonaros from Google, and Ariel Altman from YouTube. The meeting provided notice of the upcoming OSG Advisory and a high-level view of what issues OSG would be prioritizing in the Advisory.
- On July 16, 2021, from 3:00 pm to 3:30 pm ET, Eric Waldo from OSG and Kyla Fullenwider from U.S. Digital Response met remotely with Payton Iheme and Justine Isola from Facebook. Kate Thornton and Brian Rice from Facebook were invited and may have also attended. The meeting discussed the newly issued OSG Advisory.
- On July 23, 2021, from 1:30 pm to 2:00 pm ET, Dr. Vivek Murthy and Eric Waldo from OSG, and D.J. Patil (who OSG understands to be a then part-time consultant

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supporting the Office of Science Technology and Policy) met remotely with Nick Clegg and (very likely) Brian Rice from Facebook. The meeting discussed a recent e-mail from Mr. Clegg to Dr. Murthy concerning recent public comments by the Administration about Facebook.

- On July 30, 2021, from 2:00 pm to 2:30 pm ET, Eric Waldo from OSG met with Kevin Kane from YouTube, Lauren Kelly from Google, and Jan Antonaros from Google. The topics discussed included YouTube/Google following up on the announcement of the OSG Advisory to share more of the work it was doing around health mis- and disinformation.
- As indicated by MOLA\_DEFSPROD\_00007276, on August 10, 2021, there was a call between Eric Waldo from OSG, Robert Flaherty from EOP, and personnel from Facebook that discussed, as stated in the document, “an operation [Facebook] uncovered that is related to vaccine misinformation.”
- As indicated by MOLA\_DEFSPROD\_00007455, on or about September 14, 2021, there was a call between Eric Waldo from OSG and Kevin Kane and Jan Antonaros from Google/YouTube. As stated in the document, the purpose was “a brief meeting to discuss a new policy we are working on as well as provide an update on our overall efforts to combat harmful COVID-19 misinformation on the platform.”
- As indicated by MOLA\_DEFSPROD\_00007398, on November 22, 2021, from 4:00 to 4:30 pm ET, there was a virtual meeting attended by Tericka Lambert, other ASPA personnel, personnel from Fors Marsh Group (a contractor for ASPA), personnel from OSG, and Google/YouTube personnel. This meeting briefly touched on misinformation among other topics.

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The above list reflects OSG's identification to date, based on reasonably diligent efforts, of meetings that took place with the Social-Media Platforms relating to Misinformation and the included participants. OSG is not aware of specific additional meetings with the Social-Media Platforms relating to Misinformation, but it is possible that the above list is not exhaustive.

**NIAID.** Subject to and without waiving any of the foregoing objections, and based on a reasonable inquiry under the circumstances of abbreviated, expedited discovery, NIAID responds that no meetings took place with the Social-Media Platforms relating to Misinformation. NIAID has identified two possible meetings to discuss the potential participation by the NIAID director in U.S. Government efforts to publicize health information and provide COVID-19 and vaccine education via social media, which are not responsive to the Interrogatory, but are identified in the documents being produced in response to Plaintiffs' First Requests For Production to Defendants:

- Facebook approached NIAID in March 2020 to discuss public service announcements and ads, Facebook's CV19 hub, and an interview between Dr. Fauci and Mark Zuckerberg; NIAID scheduled the interview between Dr. Fauci and Mr. Zuckerberg (which aired on Facebook Live)
- NIAID was invited to, but did not attend, a meeting scheduled for March 4, 2021, to discuss possible Facebook Live interviews with celebrities/influencers related to COVID-19 vaccines

Further, in accordance with the Court's September 6, 2022 Order, subject to and without waiving any of the foregoing objections, and based on a reasonable inquiry under the circumstances of abbreviated, expedited discovery, including consultation with Dr. Fauci and review of Dr. Fauci and NIAID staff e-mail records, NIAID responds on behalf of Dr. Fauci in his role as Director of NIAID as follows: NIAID has not identified any communications, written or

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**VERIFICATION**

I, Max Lesko, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury that the interrogatory response of the Office of the Surgeon General to Plaintiffs' First Set of Expedited Preliminary-Injunction Related Interrogatories dated July 18, 2022, Common Interrogatories Numbers 1-5 and Additional Interrogatories Numbers 1-3, contained in the Responses of the Office of the Surgeon General, is true and correct, to the best of my knowledge.

Dated: December 16, 2022



---

Max Lesko

Chief of Staff

Office of the Surgeon General



## EXHIBIT H

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VIDEORECORDED VIDEOCONFERENCED DEPOSITION  
OF ERIC WALDO  
DECEMBER 22, 2022

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1 And all of them had -- you know, had an opportunity  
2 to improve how they were handling this issue. And  
3 our job was to raise this as an issue so folks  
4 could know about it and hopefully take steps to --  
5 to ameliorate the situation.

6 Q. Yeah. And that -- those taking steps  
7 to ameliorate would include social media platforms,  
8 correct?

9 A. Correct. But I would again  
10 highlight, you know, when you think about our --  
11 the advisory but also the work we were doing, the  
12 -- the community toolkit, we recognize that we did  
13 call for an all-society approach, and we recognize  
14 that there are multiple ways to stop or lessen the  
15 spread or damage of misinformation, including  
16 individuals and others. You know, it's -- it's not  
17 just -- it wasn't just a technology company issue  
18 or a social media issue.

19 Q. Are you aware who devised that phrase  
20 all-of-society approach to describe the advisory --  
21 or the advisory --

22 A. I'm not --

23 Q. -- recommendations?

24 A. I'm not aware.

25 Q. Scrolling down in Exhibit 3, the next

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1 bullet point talks about meeting on July 30th, 2021  
2 between yourself and representatives of  
3 Google/YouTube, correct?

4 A. That is correct.

5 Q. And the interrogatory responses  
6 supplied as topics discussed included in  
7 YouTube/Google, following up on the announcement of  
8 the OSG advisory to share and work the work it was  
9 doing around health mis- and disinformation,  
10 correct?

11 A. That's correct.

12 Q. What do you remember being said about  
13 that in this phone call or Zoom call?

14 A. It was a Zoom call. I think it was  
15 really just the YouTube and Google teams saying,  
16 hey, we agree that this is a really important  
17 issue, and here's all the things that -- that we  
18 are working on about it. So it was -- it was them  
19 informing us of the steps they are currently  
20 taking.

21 Q. And I believe you said part of the  
22 follow-up call with Facebook was to ask them to,  
23 you know, give a report on any steps they would be  
24 taking in response to the health advisory, correct?

25 A. Correct.

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1           Q.     And is that what's going on here with  
2     -- with YouTube as well, to ask them, okay, we've  
3     issued a health advisory. What are you guys doing  
4     about it?

5           A.     I think they -- they asked for the  
6     call. So this was a little different. They asked  
7     for the call on their own to share with us what  
8     they were doing. I think they -- from a government  
9     affairs perspective, public affairs people were  
10    trying to say, hey, look, you know, we agree with  
11    you, and we want to let you know all the things  
12    we're doing.

13          Q.     Did the report --

14          A.     And, again, I think --

15          Q.     Go ahead.

16          A.     And I would think, right, we had  
17    first had that first call to let them know the  
18    report was coming out. The report came out. They  
19    looked at it, and then they said, hey, we've looked  
20    at it. Let us tell you, you know, what we're  
21    doing.

22          Q.     And in the first call you had  
23    mentioned, I think, that you advised them that  
24    there would be some potential recommendations for  
25    them, right?

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1           A.       That there were recommendations for  
2    -- I think they -- certainly within the advisory  
3    there are recommendations for what social media  
4    companies can do.

5           Q.       And then in the follow-up call, they  
6    came back to you and said, okay, we've read the  
7    advisory and here are steps that we are taking or  
8    plan to take in response to the issues raised in  
9    the advisory?

10          A.       I don't recall specifically, but that  
11    was -- the general tone was let us tell you what  
12    we're doing about this issue. I didn't -- I didn't  
13    get the impression that it was new things. I got  
14    the impression that it was work that they were  
15    already doing.

16          Q.       What did they report to you?

17          A.       I don't really remember, but I think  
18    it was generally saying, hey, we have a -- you  
19    know, we have a team that does -- that works on  
20    this issue. Like we're -- you know, it's important  
21    to us. Like we're thinking about how we're  
22    addressing it.

23                    Just it was, I think, more of a  
24    process call of saying, you know, we want you to  
25    know this is on our agenda.

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1           Q.     So did they, for example, report that  
2     they had adopted new policies to address  
3     misinformation on YouTube?

4           A.     I don't recall.

5           Q.     Or did they give indication they were  
6     taking more steps to kind of remove more harmful  
7     information on YouTube?

8           A.     I don't recall if there was a new. I  
9     recall them telling us what they were currently  
10    doing to address that. So I -- and some of these  
11    calls I experienced as them -- you know, they read  
12    the advisory and said, yeah, we are doing that.  
13    Thanks. You may not know all the things we're  
14    doing, so let us share with you what we're doing.

15          Q.     And you don't -- you don't remember  
16    whether they, you know, advised you of kind of new  
17    policies, like, hey, you raised an issue for us,  
18    and -- and here's are some things we're going to do  
19    to respond to it?

20          A.     I don't recall. I think I would  
21    remember because if it was the something new, I  
22    feel like we would have shared it or probably done  
23    something like put it in a fact sheet to say, look,  
24    because of this report, these many new things are  
25    happening.

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1           Q.     Did you do that for any of them? Did  
2     you issue any fact sheets saying, you know, here  
3     are some positive developments that came out of the  
4     health advisory?

5           A.     I don't remember. I don't think so.  
6     The only time that could have happened would have  
7     been when we did the -- that -- what I keep calling  
8     the community toolkit, but I don't recall -- I do  
9     remember Twitter tweeted something in support of  
10    Dr. Murthy's advisory.

11                   So when we launched on whatever, the  
12    15th or 16th, the Twitter policy handle I think  
13    either retweeted or quote tweeted and said  
14    something like, we agree. This does call -- we do  
15    need an all-society approach, and here's what we're  
16    doing. So that's my one recollection.

17           Q.     And we talked earlier about how there  
18    was a particular focus on Facebook on July 15th and  
19    16th, and you mentioned that, I think, Jennifer  
20    Psaki mentioned Facebook specifically in the press  
21    conference and President Biden said "They're  
22    killing people," the next day.

23                   Do you know why the White House  
24    thought a particular focus on Facebook was  
25    appropriate?



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1 of -- something they discovered. I think it ended  
2 up being like a foreign entity was doing work on  
3 Facebook, spreading -- I don't know if it -- what  
4 type of misinformation, but they were letting us  
5 know that they discovered it.

6 Q. Do you know why they thought to brief  
7 you guys on that?

8 A. I do not --

9 MS. CHUZI: Objection. Calls for  
10 speculation.

11 THE WITNESS: I don't know why.

12 Q. (BY MR. SAUER) Scrolling down  
13 another bullet point, there's a reference to a  
14 September 14th meeting between yourself and Kevin  
15 Kane and Jan Antonaros at Google/YouTube, correct?

16 A. That is what the document says,  
17 correct.

18 Q. Yeah. And do you recall that meeting  
19 or phone call?

20 A. Not really. That's actually a few  
21 days before my first child was born, so I don't --  
22 I -- I vaguely remember this.

23 Q. You had other matters on your mind at  
24 that time?

25 A. I -- I did.

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1           Q.     It -- it -- it -- it says the purpose  
2     was a brief meeting to discuss a new policy we are  
3     working on as well as provide and update on our  
4     overall efforts to combat harmful COVID-19  
5     misinformation on the platform, right?

6           A.     That's what it says, yes.

7           Q.     So this would have been, I take it, a  
8     kind of second update by them to you following the  
9     health advisory of stuff they're doing to combat  
10    harmful COVID-19 misinformation through YouTube,  
11    correct?

12          A.     That's correct.

13          Q.     So first, they provided that update,  
14    I think, on the July 30th meeting that we talked  
15    about above, correct?

16          A.     Yes.

17          Q.     And then they --

18          A.     Correct.

19          Q.     Sorry. And they followed up again on  
20    September 14th of another update of, you know, kind  
21    of telling the Surgeon General's office what they  
22    were doing to fight misinformation?

23          A.     That's correct.

24          Q.     Do you know what it was -- it says  
25    they gave some kind of update on overall efforts to

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1     combat harmful COVID-19 misinformation on the  
2     platform. Do you know what those efforts were?

3             A.     I don't recall.

4             Q.     Do you remember anything specific  
5     about what YouTube and Google were doing in this  
6     time frame to kind of remove or -- or reduce the  
7     spread of misinformation?

8             A.     I don't recall.

9             Q.     It also says that they were -- the  
10    meeting was to discuss a new policy we were working  
11    on. Do you remember that?

12            A.     I do not.

13            Q.     Do you know what new -- was that a  
14    new policy that related to misinformation?

15            A.     I'm not sure.

16            Q.     Or a new policy related to something  
17    unrelated?

18            A.     I don't recall.

19            Q.     You remember YouTube and Google  
20    raising anything that was unrelated to the health  
21    advisory about this information and these two  
22    calls?

23            A.     I don't recall.

24            Q.     So you don't know whether other  
25    topics came up or if they were just focused on

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1 health misinformation following the advisory?

2 A. I'm not certain. I don't recall.

3 Q. Do you remember anything specific  
4 that was said in this call on September 14th?

5 A. I do not.

6 Q. Did you say anything?

7 A. I mean, I would have, in general,  
8 been -- tried to greet them, asked them how they  
9 were doing, and certainly asked them, you know, be  
10 -- expressed some sort of feeling of, you know,  
11 interest in what they wanted to share.

12 Q. Okay. But do you remember saying  
13 anything in response to what they did share about a  
14 new policy and update on overall efforts to combat  
15 harmful misinformation?

16 A. I do not.

17 Q. Going down a little further, last  
18 bullet point here refers to a meeting on  
19 November 22nd, 2021. It mentions that personnel  
20 from OSG were involved in this meeting. Do you  
21 remember -- were you involved in this meeting? Do  
22 you know?

23 A. I don't think so. I do not believe  
24 so. If I was on it -- if I was in the meeting, I  
25 would have identified it.

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1 focused, given your personal situation at the time,  
2 but do you know whether there was a briefing on  
3 this?

4 A. I do not.

5 Q. Do you know whether Facebook talked  
6 to, you know, Courtney, Rob Flaherty, DJ Patil  
7 about this in your absence?

8 A. I do not.

9 Q. Exhibit 31. Do you remember this  
10 e-mail from the Google/YouTube team in  
11 September 29th?

12 A. So I would have been on paternity  
13 leave during this time.

14 Q. Okay. And in this e-mail, they  
15 report back to you and Nancy S. Negrón about --

16 A. Negrón.

17 Q. Yeah, who's she?

18 A. Nancy Negrón was my deputy director  
19 of engagement.

20 Q. And they report back about having a  
21 COVID-19 vaccine misinfo policy that allows them to  
22 remove a limited list of verified false claims  
23 about COVID vaccines, right?

24 A. Yes, that's what the e-mail says.

25 Q. And they also report back to you guys

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1 that they're introducing a new policy that  
2 prohibits content that includes harmful  
3 misinformation about the safety, efficacy, and  
4 ingredients for the vaccines, right?

5 A. Yes, that's what the e-mail says.

6 Q. Is this an unsolicited e-mail or are  
7 they responding to some kind of communication or  
8 request from you guys, do you know?

9 A. I'm not positive, but it would appear  
10 to be an unsolicited e-mail.

11 Q. I know that you had said earlier that  
12 you reached out to Facebook, Twitter, and YouTube  
13 in the aftermath of the health advisory that --  
14 to -- to see what steps they were taking. Is that  
15 response to that request for information?

16 A. Could be. I'm not certain, to be  
17 honest with you. But based on both my departure --  
18 and I think I had had an out-of-office at this  
19 moment, which may have led them to add Nancy.  
20 Nancy was also just coming on, and I don't think  
21 her HHS e-mail had been set up yet, but I'm not --  
22 I'm not positive.

23 Q. Let's look at Exhibit 32. Can you  
24 see this one on screen share?

25 A. Yes, I see this note.

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1 THE VIDEOGRAPHER: The time is 3:41  
2 p.m. Central Standard Time. We are back on the  
3 record.

4 Q. (BY MR. SAUER) Mr. Waldo, you're  
5 aware that on March 3rd the Surgeon General's  
6 office issued a Request For Information about  
7 social media misinformation. You recall that?

8 A. Yes.

9 Q. Yeah. And here on the screens share,  
10 I'm showing you Exhibit 42 that I previously  
11 e-mailed your counsel. (Technical difficulty) this  
12 the RFI --

13 A. That's correct.

14 Q. -- on here, right? Yeah. Called  
15 Impact of Health Misinformation on the Digital  
16 Information Environment in the United States  
17 Through the COVID-19 Pandemic Request for  
18 Information, right?

19 A. That's correct.

20 Q. And were you involved in formulating  
21 this RFI at all?

22 A. I was involved in meetings where the  
23 -- where there was a discussion about whether or  
24 not to do this RFI or for the overall strategy  
25 around -- around this data by -- with -- with the

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1 team, yes.

2 Q. Overall strategy. What overall  
3 strategy was there with -- regarding this RFI?

4 A. I'm sorry, I didn't say strategy  
5 about this RFI. Strategy whether or not there was  
6 going to be additional data requests to make and  
7 how to make them.

8 Q. Oh. You mean additional data  
9 requests. What do you mean by that?

10 A. I mean -- I shouldn't say additional.  
11 I think there was a question of whether or not we  
12 were going to -- going to make questions, you know,  
13 ask for -- given that the -- given the  
14 conversations with Facebook and others, was there  
15 something more constructive we could do around  
16 helping researchers have a better understanding of  
17 what's happening in this community. And so  
18 ultimately, the RFI was -- was determined as the  
19 path forward.

20 Q. Okay. So were there other paths  
21 forward (technical difficulty) Surgeon General's  
22 office --

23 (A discussion was held off the  
24 record.)

25 Q. (BY MR. SAUER) Were there other



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1     **paths forward about COVID-19 misinformation that**  
2     **the Surgeon General's office did or was this the**  
3     **only one at this time?**

4                   MS. CHUZI:   Objection.   To the extent  
5     that question calls for information covered by the  
6     deliberative process privilege, I will instruct the  
7     witness not to answer.

8                   THE WITNESS:   On the advice of  
9     counsel, I will not answer the question.

10            **Q.     (BY MR. SAUER)   I'm not asking about**  
11     **deliberations.   I'm asking if there were actions**  
12     **taken.   Did the Surgeon General's office do**  
13     **anything other than RFI to address issues of COVID**  
14     **misinformation in this time frame?**

15            A.     Not to my knowledge.

16            **Q.     Scrolling down, were you involved in**  
17     **formulating, you know, kind of what kind of**  
18     **information to ask for here in the RFI?**

19            A.     No.

20            **Q.     Who was involved in formulating kind**  
21     **of the specific types of information to ask for?**

22            A.     I think Kyla was the primary driver  
23     on the RFI from a content expert perspective.

24            **Q.     That's Kyla Fullenwider?**

25            A.     That's correct.

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1 Q. Do you know if she had input from  
2 Renee DiResta or other academics in formulating the  
3 RFI?

4 A. I do not.

5 Q. Do you know -- do you know who she --  
6 who she would have worked with in formulating it?

7 A. I do not.

8 Q. Do you know if anyone besides Kyla  
9 had any input into what information to ask for?

10 A. I know that Kyla was running these  
11 ideas by Max Lesko from an -- more of a process,  
12 getting Dr. Murthy's input perspective. More or  
13 less of a content expertise perspective. But I  
14 think she certainly ran this by Max.

15 Q. And that was to get Dr. Murthy's  
16 approval on the approach taken?

17 A. I believe so, yes.

18 Q. Do you know if Dr. Murthy provided  
19 input on the content of the RFI, asked for this  
20 information, that kind of thing?

21 A. I'm not certain.

22 Q. Anyone else you know of besides  
23 Dr. Murthy, Max Lesko, and Kyla Fullenwider  
24 involved in the formulation of the RFI?

25 A. Not to my knowledge.

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1 Q. What is Kyla's role in the Surgeon  
2 General's office in this time frame? I remember  
3 she's in US Digital Response. Is she a -- an  
4 employee of the Surgeon General's office by now or  
5 what's her formal role?

6 A. I'm not certain how -- what was the  
7 mechanism for how she was employed out of HHS, but  
8 I know she was doing work on behalf of the Surgeon  
9 General.

10 Q. The RFI here on the -- I think it's  
11 on the second page of the document -- asks for  
12 information about technology platforms, correct?

13 A. What page are you on, sir?

14 Q. Second page of the document, here  
15 down in the bottom right, column number 2,  
16 Information about Technology Platforms.

17 A. Yes. That's correct.

18 Q. And it asks number 3: Information  
19 about how widespread COVID-19 misinformation is on  
20 individual technology platforms including general  
21 search engines, content sharing platforms, social  
22 media platforms, e-commerce platforms, crowdsourced  
23 platforms, and instant messaging systems, correct?

24 A. That's correct.

25 Q. Were there discussions -- general

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1 search engines, that's like Google, right?

2 A. I assume so.

3 Q. What's a content sharing platform?

4 Is that like Reddit?

5 A. I'm not certain. I don't -- I'm not  
6 sure what the technical definition is there, but  
7 it --

8 Q. Do you know what kind of platform --

9 A. Because that seems -- that seems  
10 different than social media.

11 Q. Yeah, what kind of platforms are they  
12 referring to there, do you know?

13 A. I do not.

14 Q. It goes on to say social media  
15 platforms, then e-commerce platforms. What are  
16 those?

17 A. I presume places where you -- where  
18 e-commerce occurs so...

19 Q. eBay, Amazon, places like that?

20 A. I think -- I definitely would think  
21 Amazon, yeah.

22 Q. What -- were there discussions that  
23 you're aware of about COVID misinformation being  
24 shared on e-commerce platforms?

25 A. I recall at some point in the rollout

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1 Kyla sharing with me just from a factual  
2 perspective that on sites like Amazon it was  
3 possible to also spread health mis- and  
4 disinformation based on promotion of, you know,  
5 certain -- I think the algorithm could promote if  
6 you like this, buy this, and maybe promoting  
7 conspiracy theories.

8 Q. So conspiracy theories about COVID or  
9 other conspiracy theories?

10 A. I think it was about COVID but I  
11 don't truly recall.

12 Q. Okay. What are crowdsourced  
13 platforms?

14 A. I'm not sure what the technical  
15 definition is of a crowdsourced platform.

16 Q. Do you know what platforms are being  
17 referred to there in that -- in that phrase?

18 A. As I said just now, I don't know what  
19 crowdsourced platforms means in the context of this  
20 document.

21 Q. So one of the things that's asked for  
22 here is aggregate data and analysis on the  
23 prevalence of COVID-19 misinformation on individual  
24 platforms including exactly how many users saw or  
25 may have been exposed to instances of COVID-19

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1     **misinformation, right?**

2             A.     Yes, that's what the RFI says on that  
3     paragraph.

4             Q.     Is that the kind of data that you  
5     guys have been asking Facebook for in the meetings  
6     in 2021 where you talked about data transparency?

7             A.     It appears to be a version of that,  
8     yes.

9             Q.     Scrolling down here at number 5, it  
10    says information about the sources of COVID-19  
11    misinformation. Do you see that?

12            A.     I do see that.

13            Q.     And it asks for information about the  
14    major sources of COVID-19 misinformation associated  
15    with exposure, correct?

16            A.     That is what 5 sub bullet A says,  
17    correct.

18            Q.     What does "associated with exposure"  
19    mean there?

20            A.     It says -- I'm not sure technically.  
21    It says information about COVID -- resources about  
22    COVID-19 misinformation. Information about the  
23    major sources of COVID-19 misinformation associated  
24    with exposure. I don't -- let's see, does it have  
25    the definition in there further down?

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1           Q.     I don't recall. I guess up here it  
2     says --

3           A.     Sorry. I was trying to look. Yes.

4           Q.     Seeing content in news feeds and  
5     exposure.

6           A.     Yeah, okay. So it seems to be saying  
7     that information associated with seeing the content  
8     in news feeds and search results are  
9     algorithmically nominated content.

10          Q.     It goes on under little I there to  
11     say: By source, we mean both specific public  
12     actors that are providing misinformation as well as  
13     components of specific platforms that are driving  
14     exposure to misinformation, correct?

15          A.     Yes, that's what the document says.

16          Q.     So the RFI is actually seeking  
17     information about specific speakers or posters on  
18     social media platforms that spread misinformation,  
19     right?

20          A.     I'm not sure, because earlier, you  
21     highlighted that it talks about aggregate data and  
22     I'm pretty sure the document also talks about  
23     anonymity.

24          Q.     So you think that specific public  
25     actors does not refer to specific people who spread

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1 -- provide misinformation?

2 A. It may, but I'm pretty sure in this  
3 document there's some sort of caveat about having  
4 to submit anonymized data.

5 Q. Okay. That would be an indicator of  
6 people who are reviewing it, right, the people  
7 exposed to the misinformation, right?

8 A. I'm sorry. Say again, sir.

9 Q. Doesn't the anonymized data refer to  
10 the users who are exposed, not the public actors  
11 who are providing this information?

12 A. I'm not sure. If you can bring up  
13 that portion of the document, I'm happy to take a  
14 look. But I'm pretty sure in general when the  
15 federal government does requests for information  
16 like this, there are various stipulations that have  
17 to be made to -- for -- to ensure that there's  
18 anonymized data.

19 Q. Let me ask you this. I believe there  
20 was a plan expressed by the Surgeon General's  
21 office to render any comments received in response  
22 of this information public, right, to publicly post  
23 them?

24 A. Are you asking -- can you repeat the  
25 question? It sounded like a statement.



5           Q.       Was there a -- do you recall a policy  
6   of that?

13 Q. Let me ask this. Do you know whether  
14 the comments received in response to this RFI have  
15 ever been published?

18 Q. And we submitted a FOIA request for  
19 them months ago and haven't received any yet. Are  
20 you aware of that?

22 Q. So you don't know whether the Surgeon  
23 General's office ever made these -- the comments it  
24 received public?

**Fax: 314.644.1334**

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1 Q. And here, for example in Exhibit 45,  
2 there's an e-mail from Max Lesko to Nick Clegg and  
3 Brian Rice and someone else at Facebook with a  
4 letter from the U.S. Surgeon General attached,  
5 correct?

6 A. Yes, that's an e-mail from Max Lesko  
7 to Nick Clegg, Brian Rice, and Nathaniel Gleicher.

8 Q. And it indicates that he's attached a  
9 letter from Surgeon General Murthy to Mark  
10 Zuckerberg, right?

11 A. That's correct.

12 Q. And he says -- also says: Let me  
13 know if I can be helpful with respect to the  
14 request for information which has been sent to the  
15 Federal Register and expect to receive submissions  
16 in the coming days. Correct?

17 A. Yes, that's what Max has written to  
18 -- to those individuals.

19 Q. And so the Surgeon General's office  
20 e-mailed a link to the RFI to Facebook and also  
21 attached a letter directly from Surgeon General  
22 Murthy to Mark Zuckerberg, right?

23 A. That is what the e-mail says, yes.

24 Q. And then Exhibit 46. And this is --  
25 is this actually the letter from Surgeon General

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1 Murthy to Mark Zuckerberg dated March 3rd, 2022  
2 that Max Lesko e-mailed?

3 A. It would appear so.

4 Q. Yeah, let me put it on the screen  
5 share. And the purpose of this letter is to  
6 encourage Facebook to participate in the RFI,  
7 right?

8 A. It's -- it says: I am writing today  
9 to request that your company contribute to the RFI.

10 Q. So he's encouraging Facebook to  
11 contribute to the RFI, right?

12 A. He's definitely asking him to do so,  
13 yes.

14 Q. And he says: Given that a large  
15 proportion of health misinformation is spread  
16 through technology platforms, my Advisory includes  
17 a call for technology companies to join this  
18 broader effort to create a safer, healthier  
19 information environment, right?

20 A. Yes, that's what -- that's an  
21 accurate reading of that portion of the letter.

22 Q. And he requests responses from  
23 companies about the extent and spread of COVID-19  
24 misinformation on your platforms, policies to  
25 address COVID-19 misinformation, and their

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1 effectiveness, sources of COVID-19 misinformation  
2 and so forth, right?

3 A. That's an accurate reading of that  
4 portion of the letter.

5 Q. Were you involved in drafting the  
6 letter? I think you probably were still on  
7 paternity leave at this time, right?

8 A. Yeah. As I mentioned, this letter is  
9 dated March 3rd and I was still on paternity leave.  
10 So I was not involved in the drafting of this  
11 letter.

12 Q. Did Max Lesko send similar letters to  
13 other social media platforms?

14 A. I think so.

15 Q. Yeah. I mean, I don't want to put  
16 six more exhibits in front of you, but would you  
17 agree that he sent a very similar, basically  
18 identically phrased letter to Google, LinkedIn,  
19 Twitter, YouTube, and Microsoft all on that same  
20 day, March 3rd, 2022?

21 A. I don't know if he did, but if you --  
22 I don't have any reason to disbelieve that he did,  
23 so. That, I believe was the plan.

24 Q. Let's just very briefly, I'm going to  
25 e-mail those to your counsel and I'll pull them up

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1 real quick.

2 And you said you're aware that that  
3 was the plan, right?

4 A. I think I became aware after I got  
5 back that that happened. I wasn't part of the  
6 planning process.

7 Q. Here on the screen share, I'm showing  
8 you Exhibit 47. Similar letter to Sundar Pichai of  
9 Google from Surgeon General Murthy about the RFI  
10 dated March 3rd, correct?

11 A. Yes, that's the date of the letter.  
12 Sir, if you're -- okay. Sorry.

13 Q. Exhibit 48, yeah, -- similar  
14 letter --

15 A. Thank you.

16 Q. -- to the CEO of LinkedIn about the  
17 RFI encouraging them to participate, correct?

18 A. It's a letter asking -- informing  
19 them and requesting that they participate in the  
20 RFI.

21 Q. In fact, these letters kind of all  
22 have exactly the same text, right? Is that your  
23 understanding?

24 A. You're moving the letters up and down  
25 very quickly but I don't have any reason to believe

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1 they're not virtually the same.

2 Q. Exhibit 49, similar letter to  
3 Twitter, right, and Parag Agrawal, who was then the  
4 CEO of Twitter?

5 A. Yes, it appears to be the same  
6 functional letter. I'm not having much of an  
7 opportunity to review it. But I don't have any  
8 reason to believe it's not the same overall text  
9 requesting that they participate in the RFI.

10 Q. Exhibit 50, same letter to Microsoft  
11 -- I'm sorry, YouTube, I apologize. Same letter to  
12 YouTube, correct?

13 A. You're okay. Yes, sir, I'm only  
14 looking at part of the letter that you're sharing  
15 and I can't actually review all of it in the way  
16 that we're doing it right now. But it appears to  
17 be the same form of a letter asking for a request  
18 -- requesting that -- informing them about the RFI  
19 and requesting that they participate.

20 Q. And then finally, Exhibit 51, similar  
21 letter to Microsoft, correct?

22 A. That looks like it's to the Microsoft  
23 corporation. Right now, I'm only being exposed to  
24 the first couple of lines. But it looks -- the  
25 first -- overall, it seems to be the same letter

4                    A.        I don't know.

7           A.     I think so. But I'm not positive.

9                   A.       I don't know.

11                   A.     I don't know.

13                   A.     I don't know.

17                    A.     It does not.

22                    A.     It does not.

25                   A.     I do not.

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NOTARIAL CERTIFICATE

I, Tammie A. Heet, Registered Professional Reporter, certified Shorthand Reporter for the State of Illinois, and Certified Court Reporter for the state of Missouri and a duly commissioned Notary Public within and for the States of Missouri and Illinois, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me to the best of my ability and thereafter reduced to printing under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

  
Tammie A. Heet, RPR, CSR, CCR





## **EXHIBIT I**

---

**From:** Kevin Kane [REDACTED]  
**Sent:** 7/9/2021 12:36:47 PM  
**To:** Waldo, Eric (HHS/OASH) [REDACTED]  
**CC:** [REDACTED] Kyla Fullenwider [REDACTED]  
**Subject:** Re: Connecting with Dr. Murthy's office

Thank you! Look forward to speaking with you then.  
Best,  
Kevin

On Fri, Jul 9, 2021 at 10:28 AM Waldo, Eric (HHS/OASH) [REDACTED] wrote:  
Sorry about that! Moving too fast. Will update.

---

**From:** Kevin Kane [REDACTED]  
**Sent:** Friday, July 9, 2021 9:28 AM  
**To:** Waldo, Eric (HHS/OASH) [REDACTED]  
**Cc:** [REDACTED] Kyla Fullenwider [REDACTED]  
**Subject:** Re: Connecting with Dr. Murthy's office

Thanks Eric -

The invite you sent was for 3:30-4:15, and unfortunately some of my colleagues won't be able to make it then.  
Any chance we could meet 3:00-3:30 (ET) on the 14th?

Thanks again, and hope you have a good weekend!

Kevin

On Thu, Jul 8, 2021 at 5:30 PM Waldo, Eric (HHS/OASH) [REDACTED] wrote:  
Great. Just send you a zoom!

---

**From:** Kevin Kane [REDACTED]  
**Sent:** Thursday, July 8, 2021 8:35 AM  
**To:** Waldo, Eric (HHS/OASH) [REDACTED]  
**Cc:** [REDACTED] Kyla Fullenwider [REDACTED]  
**Subject:** Re: Connecting with Dr. Murthy's office

Good Morning Eric -

How about we shoot for 3:00-3:30pm (ET) on Wednesday, July 14?

Thanks,

Kevin

On Wed, Jul 7, 2021 at 5:11 PM Waldo, Eric (HHS/OASH) <[REDACTED]> wrote:

Hi Kevin,

Thanks so much for your note. Would love to have more of your colleagues join.

I'm traveling with Dr. Murthy for part of next week so it's a bit tight. Here are some options:

Wednesday, July 14: 2:45pm-4:15pm ET; 5pm-6pm ET

Thursday, July 15: 4:15pm-5pm ET

If none of those work, I have some time on Friday, July 16 and we can always discuss the following week.

Thanks so much!

Eric

---

**From:** Kevin Kane <[REDACTED]>  
**Sent:** Wednesday, July 7, 2021 4:51 PM  
**To:** Waldo, Eric (HHS/OASH) <[REDACTED]>  
**Cc:** [REDACTED] Kyla Fullenwider <[REDACTED]>  
**Subject:** Re: Connecting with Dr. Murthy's office

Hi Eric -

It's great to e-meet you as well. If possible, I wanted to include a few of my colleagues for this conversation and see if you had any availability next Wednesday or Thursday to meet. Would you happen to have any time open either of those days? If not, I'm more than happy to find another day that would work for you.

Thank you for reaching out and look forward to speaking with you soon!

Best Regards,

Kevin

On Tue, Jul 6, 2021 at 9:49 AM Waldo, Eric (HHS/OASH) <[REDACTED]> wrote:  
Hi Alexandra and Kevin,

I hope this finds you well. I'm Dr. Murthy's Director of Engagement and I wanted to reach out.

As you know, one of the issues Dr. Murthy has been thinking about is how to help stop the spread of health misinformation as we continue to tackle COVID19 and beyond. I know you and your teams are working hard and thinking deeply about this issue. We'd love to chat over zoom to connect and discuss what's on the horizon for our teams.

Is there a good time this week to connect? Happy to work with whomever on your team to coordinate calendars.

Thanks so much!

Eric

Eric W. Waldo [He/Him]  
Director of Engagement  
Office of the U.S. Surgeon General, Dr. Vivek Murthy  
U.S. Department of Health & Human Services

--

Kevin Kane | Government Affairs & Public Policy Manager,

YouTube | [REDACTED] [REDACTED]

--

Kevin Kane | Government Affairs & Public Policy Manager,

YouTube | [REDACTED]

--

Kevin Kane | Government Affairs & Public Policy Manager,

YouTube | [REDACTED]

--

Kevin Kane | Government Affairs & Public Policy Manager,

YouTube | [REDACTED]

## EXHIBIT J



**From:** Kevin Kane [REDACTED]@google.com]  
**Sent:** 9/29/2021 12:56:30 PM  
**To:** Waldo, Eric (HHS/OASH) [REDACTED]@hhs.gov]; [REDACTED]@gmail.com  
**CC:** Jan Antonaros [REDACTED]@google.com]  
**Subject:** YouTube Vaccine Policy Announcement

Good Afternoon -

I'm writing to share an update we recently made to YouTube's policies pertaining to vaccine-related misinformation.

Today we have a [COVID-19 Vaccine misinfo](#) policy which allows us to remove a limited list of verified false claims about COVID-19 vaccines.

We just announced that we will be introducing a new policy that prohibits content that includes harmful misinformation about the safety, efficacy, or ingredients for currently administered vaccines that are approved and confirmed to be safe and effective by local health authorities and by the World Health Organization (WHO).

You can learn more about the announcement we made [here](#) and a detailed overview of our policy in our help center [here](#).

Please let me know if you have any questions.

Best Regards,  
Kevin

--

Kevin Kane | Government Affairs & Public Policy Manager,

YouTube | [REDACTED]@google.com | [REDACTED]

## **EXHIBIT K**





## OFFICE OF THE SURGEON GENERAL

March 3, 2022

Sundar Pichai  
Chief Executive Officer  
Google, Inc.

Dear Mr. Pichai,

I hope this letter finds you well.

As you know, the proliferation of health misinformation during the pandemic has been both extensive and dangerous. Over the last year I've spoken with health care and public health workers across the country about how health misinformation is harming their ability to care for patients, contributing to burnout, and posing a growing threat to the nation's health. It is clear that we must do everything we can to address this threat. We also owe a debt of action to the doctors, nurses, and public health professionals who have sacrificed so much for us throughout this pandemic.

To this end, my office issued a Surgeon General's Advisory on Health Misinformation in July 2021, calling for action across all sectors of society to address the spread of health misinformation. Given that a large proportion of health misinformation is spread through technology platforms, my Advisory includes a call for technology companies to join this broader effort to create a healthier, safer information environment.


My office is launching an initiative to deepen our understanding of the spread of COVID-19 misinformation, the role the information environment played in societal response to the pandemic, and its implications for future public health emergencies. We are issuing a public *Request for Information (RFI)* to gather and share data and research on health misinformation during the COVID-19 pandemic, including the unique role that technology and social media platforms play in the dissemination of critical health information during a public health emergency. We will share what we learn through the RFI directly with the public at [surgeongeneral.gov/RFI](https://surgeongeneral.gov/RFI).

I am writing today to request that your company contribute to the RFI. To date, our collective understanding of the nature of misinformation that is spreading online is incomplete which in turn hinders our nation's ability to implement a robust, effective response. Specifically, I am requesting responses from companies about the extent and spread of COVID-19 misinformation on their technology platforms, policies to address COVID-19 misinformation and their effectiveness, sources of COVID-19 misinformation, and information about the sale of unproven COVID-19 products or services.

I hope that all of us – researchers, companies, members of the health care community, civic leaders, families, and concerned Americans alike – can work together to protect people's right to make decisions about health based on accurate information. I remain confident that through our collective efforts, we can address the harms of health misinformation and safeguard the health of the nation.

Thank you for your cooperation and partnership on this critical public health matter.

Sincerely,



Vivek Murthy, MD, MBA  
Surgeon General of the United States

## **EXHIBIT L**

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Page 1

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE WESTERN DISTRICT OF LOUISIANA  
3 MONROE DIVISION

4 STATE OF MISSOURI ex  
5 rel. ERIC S. SCHMITT,  
6 Attorney General,  
7 et al.,

No. 3:22-cv-01213-TAD-KDM

8 Plaintiffs,

9 vs.

10 JOSEPH R. BIDEN, JR.,  
11 in his official capacity  
12 as President of the United  
13 States, et al.,  
14 Defendants.

15 THE VIDEOTAPED DEPOSITION OF CAROL CRAWFORD

16 November 15, 2022

17 9:24 a.m. to 5:33 p.m.

18 Office of General Counsel  
19 Centers for Disease Control and Prevention  
20 1600 Clifton Road NE  
21 Atlanta, Georgia

22 Reporter:

23 Maureen S. Kreimer, CCR-B-1379, CRR  
24  
25

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1 I interpreted the "check in first."

2 Q. And by this time were you already having  
3 regular meetings with Google like we've seen with  
4 Facebook?

5 A. Yeah. This was in 2021. So we had been  
6 meeting pretty regularly with Google by this time.

7 MR. VECCHIONE: Okay. You can put that  
8 aside.

9 (Plaintiffs' Exhibit 29 marked.)

10 BY MR. VECCHIONE:

11 Q. Let's try Exhibit 29. Same thing, read me  
12 the subject line, the date, and then take a look at  
13 it.

14 A. Okay. Okay. Subject line's: Followup on  
15 misinformation, or misinfo conversation. It's  
16 4/5/2021.

17 THE WITNESS: Can I see this?

18 MS. SNOW: Yes.

19 A. Okay.

20 BY MR. VECCHIONE:

21 Q. All right. So can you go to the very end,  
22 I guess, the very last page, read what you said on  
23 March 29 at 9:52.

24 A. "Are you all open to using our regular 4pm  
25 meetings to go over things with Census, or what is

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1 preferred? I wasn't clear how interested you all  
2 were on this effort or who the players are on your  
3 end."

4 **Q. So what were the regular 4:00 p.m.**  
5 **meetings you refer to?**

6 A. I think -- because I still have a  
7 4:00 p.m. meeting every other Monday with Google. I  
8 think that these were the same every-other-week  
9 check-in meetings. Sometimes we wouldn't have them.  
10 Sometimes we would have them and discuss things.

11 **Q. Did you have similar regular meetings with**  
12 **the other platforms we've been discussing, Face- --**  
13 **Meta and Twitter?**

14 A. We -- you asked some of this earlier.

15 **Q. I did.**

16 A. The same answer. So we had regular  
17 meetings with Google, and we had regular meetings  
18 with Meta. Most -- you know, the frequency changed.  
19 So, you know, I don't meet as often. I mean, Google  
20 we meet every other week. Right now with Meta it's  
21 more ad hoc.

22 **Q. Okay.**

23 A. We had had a regular meeting with  
24 Pinterest for a short period of time, and we had my  
25 memory was just more ad hoc meetings on occasion

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1 with Twitter.

2 Q. So on the regular meetings with either  
3 Google or Facebook?

4 A. Mm-hmm (affirmative).

5 Q. Well, let me ask the question this way.  
6 From the CDC end, were the same people usually  
7 attending those meetings with each social media?

8 A. It could vary. I mean, I was always -- I  
9 mean, with Google, it was typically me and Fred  
10 Smith, who's our technical lead, because often the  
11 Google questions would be more about technical  
12 implementations that we might have to work on. We  
13 were usually always on it. Sometimes I would --  
14 depending on the subject, I would bring in other  
15 people.

16 With Meta, I was pretty much always on  
17 there. Jay typically listened in. And then I would  
18 bring people in depending on the subject.

19 Q. All right. And what were the -- were the  
20 topics typically misinformation, or technical  
21 subjects?

22 A. They -- by and large, they were mostly  
23 about things other than misinformation; though  
24 misinformation was discussed in the meetings. But  
25 they were originated about getting our credible

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1     **or what the format, or Microsoft Teams, or in**  
2     **person, or?**

3             A. It was always on either teams or they had  
4     BlueJeans that we used occasionally.

5             **Q. Okay. What's BlueJeans?**

6             A. It's something like a Teams or a Zoom.

7             **Q. Okay. And, once again, do you know if**  
8     **there is any notes or record kept of the meeting?**

9             A. I did not take any notes at the meeting  
10    that I recall. I mean, same answer I have been  
11    giving. If there were any, it was minor and they  
12    would have been in Word or email.

13            **Q. Okay.**

14            **MR. VECCHIONE: 40.**

15            MR. GILLIGAN: I remember when everybody  
16    just used Skype when it was simpler times.

17            (Plaintiffs' Exhibit 40 marked.)

18    BY MR. VECCHIONE:

19            **Q. Exhibit 40. Once again the date and the**  
20    **subject line, and then read it to yourself.**

21            A. Subject line: COVID BOLO meetings on  
22    misinformation, sent on May 10, 2021.

23            Okay.

24            **Q. All right. Let's go back to the back page**  
25    **of this that's Bates number 682.**



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1 A. Okay.

2 Q. Now, this is -- I think we've said this  
3 date. It's May 10th of 2021?

4 A. Yes.

5 Q. And you send to Facebook the COVID BOLO  
6 misinformation meeting request; right?

7 A. Yes.

8 Q. And could you please read that for me?

9 A. (As read) We would like to establish  
10 COVID BOLO meetings on misinformation and invite all  
11 platforms to join the meetings. We are aiming for  
12 the first one on Friday at noon. I know you were  
13 considering a possible process on your end, but we  
14 wanted to start here just as an interim first step.  
15 Are there direct POCs on your end I should include  
16 on the invite? I'm happy to chat if better, thanks.

17 Q. All right. Now, so this is the first BOLO  
18 meeting. Does that comport with your recollection?

19 A. This is a note that I'm about to send an  
20 appointment for the first BOLO meeting and asking  
21 them who to include.

22 Q. All right. And we've already said POCs --

23 A. Yes.

24 Q. -- are the point of contacts; right?

25 A. Mm-hmm (affirmative).

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1 Q. And you said: "I know you are considering  
2 possible process on your end."

3 What did you mean by that?

4 A. As I mentioned, that I was engaging with  
5 the platform saying what format would be best for us  
6 to talk about this. And I think there were  
7 references in the exhibit a couple of times where  
8 they said they were thinking internally about what  
9 would be best. So I think I was just referencing  
10 that I knew that they were considering it as well.

11 Q. Do you know what the topics -- did you  
12 know what the topics for the BOLO were when you sent  
13 this out?

14 A. I don't know if I did or not.

15 Q. All right. Let's go to the next page back  
16 where we have -- I believe this is from Jan  
17 Antonaros to you, but he includes your email to him;  
18 right?

19 A. This -- the bottom part --

20 Q. Mm-hmm (affirmative).

21 A. -- is where I sent a similar note to  
22 Google, which is Jan.

23 Q. Okay.

24 A. And I was telling her that we would like  
25 to invite the digital platforms to attend the BOLO.

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1 I think it was me sending the appointment or a  
2 heads-up that it was coming. I can't -- it looks  
3 like maybe I -- this is an actual appointment.

4 Q. Okay.

5 A. But I tried to send each of them a  
6 personal note that we were doing it.

7 Q. And in this one you actually spelled out  
8 be on the lookout; right?

9 A. I did.

10 Q. And was that because you hadn't discussed  
11 it with them before, or did you have some concern  
12 they wouldn't know what it was?

13 A. I don't know why I didn't do it that time.

14 Q. All right. And there is Kevin Kane here  
15 with the email address [REDACTED]@Google.com. Who is  
16 that?

17 A. I don't remember Kevin, but this indicates  
18 that he was from YouTube.

19 Q. Okay. And do you recall having  
20 discussions with YouTube?

21 A. YouTube would occasionally -- people from  
22 YouTube would occasionally be on our regular  
23 meetings, depending on what we talked about. And  
24 because YouTube has the most content, like, hosting,  
25 they -- they were at the -- they were a part of the

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1 BOLO meetings, I believe, that Kevin attended  
2 probably, or someone from YouTube did.

3 Q. And you responded: "Great. I was going  
4 to ask about Kevin."

5 A. Yeah. Maybe I remembered who Kevin was at  
6 the time.

7 Q. Okay. And then finally the front page.

8 A. That's a repeat of -- oh, no, that's not.  
9 I apologize. I'm looking at the wrong one.

10 Q. And here you're sending this to the Google  
11 folks?

12 A. Yes.

13 Q. Why don't you read it for the record?

14 A. "We would like to establish COVID BOLO  
15 meetings on misinformation and invite all platforms  
16 to join the meetings. We were aiming for the first  
17 one on Friday at noon. We heard through the  
18 grapevine that Kevin Cain at YouTube would want to  
19 join. Are there other POCs on your end I should  
20 include on the invite?"

21 Q. All right. You said YouTube. Who's  
22 YouTube related to, is it Google or Facebook?

23 A. YouTube is a Google property.

24 Q. Okay.

25 A. Or platform.

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1           Q. And is it your recollection that you did  
2 have a meeting on Friday?

3           A. I think we did, but I don't have the exact  
4 date. But I believe we had -- that's when we had  
5 the first BOLO meeting.

6           Q. All right. And do you have any list of  
7 who actually showed up and was an attendee?

8           A. No.

9           Q. All right. And, once again, it would be  
10 on your calendar as far as if it happened?

11          A. Now, to clarify I don't remember keeping a  
12 list of who attended. Maybe Census might have  
13 because this is something they were arranging. But  
14 I don't recall it being sent to me. It could have  
15 been, but I don't believe so.

16          Q. So they were helping you arrange this  
17 because they'd done it before, this particular  
18 meeting?

19          A. Yes. I mean, I mentioned that they  
20 drafted the slides.

21          Q. Right.

22          A. And, you know, Chris participated in the  
23 meeting.

24          Q. Okay. Chris. Remind me his last name?

25          A. Lewinsky, Lewitzke.

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1 had one.

2 Q. So the email states that --

3 You can put that aside.

4 (Plaintiffs' Exhibit 43 marked.)

5 BY MR. VECCHIONE:

6 Q. Let's go to -- yeah, let's go to the last,  
7 43.

8 Once again for Exhibit 43 please state the  
9 subject matter line, and then the -- and who it --  
10 what the date of it is?

11 A. Subject: Claims review. 6/29/2022.

12 I have read it.

13 Q. Okay. So can you read the -- well, who is  
14 Rachel Gruner?

15 A. She is my new point of contact at Google.  
16 She replaced Jan Antonaros.

17 Q. And who's Lindsay Steele?

18 A. Lindsay Steele replaced Stanley.

19 Q. Onyimba?

20 A. "O".

21 Q. Okay. And they're both -- their emails  
22 are here in the to line; right?

23 A. Yes.

24 Q. All right. And if you could read the  
25 after Hi, Carol, Hi, Fred from Rachel, what does she

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1     **say here?**

2             A.    "The YouTube policy team is requesting  
3     evidence-based input on the claims below.  In the  
4     past, the CDC has reviewed COVID information claims  
5     and commented true or false plus any additional  
6     context needed."

7             **Q.  And then what are the claims?**

8             A.    (As read)  Claim:  High dosage of  
9     progesterone is a safe method of reversing chemical  
10    abortion, in parentheses, mifepristone and  
11    misoprostol.

12            Sorry.

13            (As read)  Claim:  High doses of  
14    progesterone is an effective method of reversing  
15    chemical abortion, in parentheses, mifepristone and  
16    misoprostol.

17            **Q.  All right.**

18            A.    "Please let me know if you have questions  
19    or concerns."

20            **Q.  And then what -- how do you respond?**

21            A.    "I'll check on this, but I think I'll  
22    probably end up needing to refer you to another  
23    agency.  I'll get back to you."

24            **Q.  So this -- this -- is it your**  
25    **understanding this didn't have anything to do with**

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1     **COVID-19 or vaccines?**

2             A. It definitely didn't have anything to do  
3 with COVID-19 or vaccines.

4             **Q. Do you know why it was sent to you?**

5             A. Well, as COVID's -- our focus is not  
6 solely on COVID. We're focusing on other topics. I  
7 think Rachel thought that we might be able to help  
8 with this topic as well.

9             **Q. Okay. Do you know who you sent it, what**  
10 **agency you sent it to, if any?**

11            A. I -- I didn't know. I called one of our  
12 centers and asked if this was something that CDC  
13 dealt with. I didn't think that we did, and they  
14 confirmed that we do not. And I don't think they  
15 had a suggestion on where to refer this to, but I  
16 can't recall for sure.

17            MR. VECCHIONE: All right. I would like  
18 to take a brief break and have the court reporter  
19 put my last exhibit together and give you copies  
20 and then --

21            MR. GILLIGAN: There is a 44, too?

22            MR. VECCHIONE: -- confer, confer with  
23 counsel, and I think we'll be finishing up.

24            (Comments off the record.)

25            THE VIDEOGRAPHER: Off the record at 5:07.



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C E R T I F I C A T E

STATE OF GEORGIA:

DEKALB COUNTY:

I, Maureen S. Kreimer, a Certified Court Reporter for the State of Georgia, before whom the foregoing deposition was taken, do hereby certify:

That CAROL CRAWFORD, the witness whose deposition is hereinbefore set forth in pages 1 to 269, was duly sworn by me and that such deposition is a true record of the testimony given by the witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of November, 2022.



MAUREEN S. KREIMER, CCR-B-1379

Notary Public in and for the  
State of Georgia. My Commission  
Expires August 14, 2024.

## EXHIBIT M

CONFIDENTIAL



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**From:** Crawford, Carol Y. (CDC/OD/OADC) [REDACTED]  
**Sent:** 5/10/2021 12:42:50 PM  
**To:** Stanley Onyimba [REDACTED]@google.com]; Jan Antonaros [REDACTED]@google.com]  
**Subject:** COVID BOLO meetings on misinformation

We would like to establish COVID BOLO meetings on misinformation and invite all platforms to join the meetings. We are aiming for our first one on Friday at noon. We have heard through the grapevine that Kevin Cain at YouTube would want to join. Are there other POCs on your end I should include on the invite?

CONFIDENTIAL

---

**From:** Crawford, Carol Y. (CDC/OD/OADC) [REDACTED]  
[REDACTED]  
**Sent:** 5/11/2021 3:55:11 PM  
**To:** Jan Antonaros [REDACTED]@google.com]; Kevin Kane [REDACTED]@google.com]  
**Subject:** RE: COVID 19 BOLO Meeting

Great – I was going to ask about Kevin at 4. ☺

**From:** Jan Antonaros [REDACTED]@google.com>  
**Sent:** Tuesday, May 11, 2021 3:51 PM  
**To:** Crawford, Carol Y. (CDC/OD/OADC) [REDACTED]@cdc.gov>; Kevin Kane [REDACTED]@google.com>  
**Subject:** Re: COVID 19 BOLO Meeting

Hi Carol, Could you please add +Kevin Kane from our YouTube team to the call below? Thank you!

Jan Fowler Antonaros  
Google Government Affairs and Public Policy  
25 Mass Ave NW, 9th FL  
Washington, DC 20001  
[REDACTED]@google.com  
Android Mobile [REDACTED]

On Tue, May 11, 2021 at 3:25 PM Crawford, Carol Y. (CDC/OD/OADC) [REDACTED]@cdc.gov> wrote:

We would like to invite digital platforms to attend a short “Be On The Lookout” meeting on COVID. Let us know if you have questions and feel free to forward this message to anyone in your organization that should attend.

Thank you.

Carol Crawford  
Chief, Digital Media Branch  
Division of Public Affairs  
OADC  
[REDACTED]@cdc.gov  
[REDACTED]

Join ZoomGov Meeting  
[REDACTED]

Dial by your location

CONFIDENTIAL

---

**From:** Crawford, Carol Y. (CDC/OD/OADC) [REDACTED]  
[REDACTED]  
**Sent:** 5/10/2021 12:44:41 PM  
**To:** Payton Itheme [REDACTED]@fb.com]; Genelle Adrien [REDACTED]@fb.com]  
**Subject:** COVID BOLO Misinformation meetings

We would like to establish COVID BOLO meetings on misinformation and invite all platforms to join the meetings. We are aiming for our first one on Friday at noon. I know you were considering possible process on your end, but we wanted start here just as interim first step. Are there direct POCs on your end I should include on the invite? Happy to chat if better.

THANKS!

## EXHIBIT N

CONFIDENTIAL



From: Crawford, Carol Y. (CDC/OD/OADC) [REDACTED]  
Sent: 6/29/2022 6:01:54 PM  
To: Rachel Gruner [REDACTED]@google.com; Smith, Fred (CDC/OD/OADC) [REDACTED]@cdc.gov; Lindsay Steele [REDACTED]@google.com  
Subject: RE: Claims review

I'll check on this but I think I'll probably end up needing to refer you to another agency. I'll get back to you.

From: Rachel Gruner [REDACTED]@google.com>  
Sent: Wednesday, June 29, 2022 4:38 PM  
To: Crawford, Carol Y. (CDC/OD/OADC) [REDACTED]@cdc.gov; Smith, Fred (CDC/OD/OADC) [REDACTED]@cdc.gov; Lindsay Steele [REDACTED]@google.com>  
Subject: Claims review

Hi Carol and Fred,

The YouTube Policy team is requesting evidence-based input on the claims below. In the past, the CDC has reviewed COVID information claims and commented TRUE or FALSE + add any additional context needed.


**CLAIM:** High doses of progesterone is a **safe** method of reversing chemical abortion (mifepristone & misoprostol)

**CLAIM:** High doses of progesterone is an **effective** method of reversing chemical abortion (mifepristone & misoprostol)

Please let me know if you have any questions or concerns.

Thanks, Rachel

--

 The linked...

Rachel Gruner, MPH  
Health Outreach Lead, Google  
[REDACTED]@google.com

## EXHIBIT O



25

**Fax: 314.644.1334**

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1 But I understand that Mr. Sur is defending the  
2 deposition, not Mr. Berger. So if you've got an  
3 issue, I don't mind if you guys want to talk about  
4 it, but I don't want to have multiple -- multiple  
5 attorneys objecting and instructions being started.  
6 Can we proceed on that basis from now on?

7 MR. SUR: We intend to do so. There my be  
8 some exceptional circumstances that warrant a  
9 different approach, but that's how we expect to  
10 proceed.

11 MR. SAUER: I am fine to hear that. You  
12 know, if things come up that raise an issue, you  
13 know, we can -- we can raise them. But, yeah,  
14 anyway, all right. I mean, to be clear, you know,  
15 any law enforcement privilege is held by the  
16 government, not by Mr. Chan's personal capacity,  
17 and Mr. Sur is the one who is there to represent  
18 the government today.

19 **Q. So -- but anyway, okay. Mr. Chan, or**  
20 **Agent Chan, who do you recall on the social media**  
21 **platform side participating in these -- in these**  
22 **working group meetings that you have been**  
23 **testifying about from 2020 and 2022?**

24 A. The companies that I remember attending  
25 the meetings are Facebook; Microsoft; Google;

1 Twitter; Yahoo!, which may have been known as  
2 Verizon Media at the time; Wikimedia Foundation and  
3 Reddit.

4 **Q. Do you remember any others at this time?**

5 A. I think I listed seven. I -- those were,  
6 like, the regular participants that I can remember.

7 **Q. How about on the U.S. government side,**  
8 **what agencies were represented at these meetings?**

9 A. At these meetings, CISA is the host and  
10 facilitator for the meeting. They also invite  
11 another component of Department of Homeland  
12 Security called Intelligence and Analysis, I&A, so  
13 DHS I&A I know attends. The Office of the Director  
14 of National Intelligence, ODNI, attends. And then  
15 from the FBI there is typically a representative  
16 from the FBI's Foreign Influence Task Force, which  
17 you will hear me abbreviate as FITF regularly. And  
18 then I attend from FBI San Francisco when I am  
19 available.

20 **Q. And why are you included in particular?**

21 A. The reason that I attend these meetings is  
22 because the way the FBI works is FBI field offices  
23 are responsible for maintaining the day-to-day  
24 relationships with the companies that are  
25 headquartered in their area of responsibility,

1     which I may occasionally abbreviate to AOR. And  
2     all of the companies that have been listed, with  
3     the exception of Microsoft, are all headquartered  
4     in FBI San Francisco's territory.

5           **Q.     Now, where is Microsoft headquartered?**

6           A.     They are headquartered in Redmond,  
7     Washington.

8           **Q.     And then on the CISA side in particular,**  
9     **what individuals participate in these meetings?**

10          A.     Typically there are senior-level -- what I  
11     believe are senior-level officials. The two that I  
12     specifically remember are Matt Masterson and Brian  
13     Scully.

14          **Q.     Is that Matt Masterson, did you say?**

15          A.     Yeah. Yeah, Matthew Masterson and Brian  
16     Scully are the two regular attendees. And they are  
17     usually -- one or both of them -- one -- either one  
18     of them is usually emceeding the meeting.

19          **Q.     So Brian Scully, do you know him**  
20     **personally?**

21          A.     I know him just through work.

22          **Q.     Okay. In what connection at work?**

23          A.     And I only know -- I only know  
24     Mr. Masterson through work as well.

25          **Q.     When you say you know him through work,**

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1     **did you work together on anything other than these**  
2     **meetings?**

3           A.     So we have met -- I want to say I have met  
4     in person with each of those individuals, twice in  
5     person; but they are primarily through either the  
6     preparatory calls for these meetings that they are  
7     hosting or the meetings themselves.

8           Q.     So you work with CISA in preparatory calls  
9     for these industry working group meetings?

10          A.     Yes.

11          Q.     And in that connection, you've met Brian  
12     Scully and Matt Masterson, correct?

13          A.     Yes.

14          Q.     And Brian Scully is involved in kind of  
15     leading or emceeding these meetings; is that right?

16                 MR. SUR:   Objection; vague.

17          Q.     BY MR. SAUER:   Or is he the -- is he the  
18     leader of the meeting when it convenes?

19          A.     For the 2020 election cycle, Mr. Masterson  
20     was the primarily -- he was primarily the  
21     facilitator. Ahead of the 2022 midterm elections,  
22     Mr. Scully has been the primary facilitator.

23          Q.     Was that because Mr. Masterson left CISA  
24     in the -- in the intervening time?

25          A.     Yes.

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1 Q. Do you know where he works now?

2 A. Yes. I believe he works at Microsoft now.

3 Q. Do you -- do you interact with him now as  
4 a representative of a -- of a tech company?

5 MR. SUR: Objection; vague.

6 THE WITNESS: I have only interacted with  
7 him on two occasions. One was when he showed up at  
8 one of the more recent industry meetings ahead of  
9 the 2022 midterm elections. That is when I  
10 discovered that he went to Microsoft. And then I  
11 asked him to send me his new contact information  
12 during the call, and then he sent me an email and  
13 provided me with his new contact information.

14 Q. BY MR. SAUER: You work with CISA on these  
15 industry working group meetings to help prepare  
16 them, what's the nature of your involvement in  
17 preparing for these meetings? Do you kind of set  
18 the agenda or -- you know, what's your involvement?

19 MR. SUR: Objection; vague and compound  
20 and implicates the deliberative process privilege.

21 MR. SAUER: Let me rephrase the question.

22 Q. Are you involved in preparing for these  
23 meetings?

24 A. No. I participate in the preparation  
25 meetings, but I do not provide any agenda items.

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1 Q. Do you remember anyone else at CISA  
2 besides Mr. Scully and Mr. Masterson who  
3 participates in these meetings?

4 A. I don't recollect any other people's names  
5 at this time.

6 Q. Were there others who participated in --  
7 but you just don't remember who they were?

8 A. Yes, that is correct.

9 Q. Okay. Let me -- do you still have Exhibit  
10 1 on the screen in front of you, your thesis?

11 A. Yes.

12 Q. Okay. Let me ask -- let's turn back to  
13 that for a little while. And if we could, I am  
14 going to scroll ahead to your abstract on Page v.  
15 Can you see that clearly, Roman numeral v.

16 MR. SUR: Roman numeral v. Okay.

17 THE WITNESS: Yes, I see it now.

18 Q. BY MR. SAUER: And can you see it also on  
19 the screen share as well as on the iPad? I want to  
20 make sure you can see the document in both places  
21 as we go forward today.

22 A. I can see the bottom half of one  
23 paragraph, and then -- wait, now -- now I see --  
24 yeah, I see the bottom paragraph of the --

25 Q. Actually, can I -- can I direct your

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1 attention this sentence here in your abstract that  
2 I am highlighting? I guess, actually, for context,  
3 if you see above -- actually, just focus on that  
4 sentence. "This" -- you say, "This thesis finds  
5 that the Russians shifted their tactics from 2016  
6 to 2020," right?

7 A. Correct.

8 Q. And then you say, "Still, the U.S.  
9 government and social media companies effectively  
10 impeded their influence campaigns primarily through  
11 information sharing and account takedowns,  
12 respectively," correct?

13 A. Correct.

14 Q. What do you mean by "information sharing"  
15 here?

16 A. So "information sharing" is meant --  
17 there -- as I mentioned previously, there are two  
18 types of information that the U.S. government,  
19 specifically the FBI, shares with the social media  
20 companies. The first type of information, the  
21 strategic information, which discusses the tools,  
22 tactics or processes, shortened to be TPPs, used by  
23 the Russians.

24 The second type of information shared by  
25 the U.S. government is tactical information. And



1 when I mean tactical information, I specifically  
2 mean indicators or selectors. And both of those  
3 are a term of art within the cybersecurity  
4 industry. And indicators or selectors include IP  
5 addresses, email accounts, social media accounts,  
6 well, website domain names, and, like, file hash  
7 values.

8 Q. Sorry. Say the last thing. What kind of  
9 hash values?

10 A. File, like electronic file hash values.

11 Q. Okay. And so, yeah, I take it the  
12 strategic information is kind of high-level advice  
13 to the social media platforms about, you know, the  
14 kinds of -- kinds of campaigns the Russians might  
15 be conducting; is that fair to say?

16 MR. SUR: Objection; lacks foundation.

17 THE WITNESS: I would not -- I would not  
18 characterize the information we share as advice.

19 Q. BY MR. SAUER: Okay. Then in that case it  
20 is sort of -- is it high-level general information  
21 about what FBI understands the Russians are  
22 engaging in when it comes to social media influence  
23 campaigns?

24 MR. SUR: Objection; lacks foundation.

25 THE WITNESS: Yes.

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1 Q. BY MR. SAUER: And then -- go ahead.

2 Sorry. Go ahead.

3 A. I can provide an example if that would be  
4 illustrative.

5 Q. That would be super helpful. Please do.

6 A. I had the 2020 elections, through our  
7 investigation of the Internet Research Agency, we  
8 discovered that they were trying to set up a base,  
9 as it were, or set up offices in western Africa.  
10 We shared this type of strategic information with  
11 the social media companies. They were able to use  
12 whatever detection methods they have to discover  
13 that there were Russian troll farms being set up  
14 specifically in Ghana and Nigeria.

15 Q. Okay. And so you mentioned earlier that  
16 tactical -- that would be strategic information?

17 A. That would be strategic. To summarize, an  
18 example would be we believe the Russian troll  
19 farms, specifically the Internet Research Agency,  
20 is trying to make inroads in western Africa.

21 Q. Got you. And then tactical information  
22 would be much more specific. Here are specific --  
23 I think you said IP addresses, websites, social  
24 media accounts, that are actually -- the FBI has  
25 concluded are being operated by the Russians. Is

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1 that what tactical information is?

2 A. That is correct.

3 Q. So there is -- and so is there information  
4 sharing from the FBI to social media platforms  
5 providing that kind of specific tactical-level  
6 information?

7 A. Yes, there is.

8 Q. And I think your -- that then the timeline  
9 in your thesis goes on specifically with  
10 "information sharing and account takedowns." Does  
11 "account takedowns" refer to the social media  
12 platforms kind of taking down those social media  
13 accounts where the FBI identifies them as being  
14 operated by Russian actors?

15 MR. SUR: Objection; lacks foundation.

16 THE WITNESS: So the FBI shares  
17 information with the social media companies, no  
18 strings attached, so that the social media  
19 companies can protect their platforms as they deem  
20 appropriate. And from what I have observed and  
21 what they have told me when we have provided them  
22 with high confidence of Russian selectors, that  
23 they have been able to discover fake Russian  
24 accounts and take them down.

25 Q. BY MR. SAUER: So you don't control what

1     they do, correct?

2           A.     I do not control what they do.

3           Q.     But you provide them with information that  
4     they don't have about the source of certain -- you  
5     called them selectors or social media accounts,  
6     correct?

7           A.     Correct.

8           Q.     And when you provide them with that  
9     information, they take it and they pull down those  
10    accounts, at least sometimes, fair to say?

11           MR. SUR:   Objection; lacks foundation.

12           THE WITNESS:   If I can clarify, what they  
13    do is they take the information that we share, they  
14    validate it through their own means.   And then if  
15    they determine that these are accounts being  
16    operated by Russian state-sponsored actors, then  
17    they have taken them down.

18           Q.     BY MR. SAUER:   Oh, okay.   And then -- and  
19    that's, I -- I take it, part of the point of your  
20    sharing the information with them, right?   So that  
21    they can assess and evaluate and then ultimately,  
22    if they agree with your conclusion, take them down,  
23    correct?

24           A.     Correct.

25           Q.     In other words, the purpose of the

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1 information sharing on the FBI's side is to have  
2 the inauthentic Russian accounts taken down so that  
3 they are not influencing political discourse in the  
4 United States, correct?

5 MR. SUR: Objection; lacks foundation,  
6 calls for speculation.

7 THE WITNESS: I would characterize it as  
8 the FBI provides information to these companies so  
9 that they can protect their platforms as they deem  
10 appropriate, and they can take whatever actions  
11 they deem appropriate without any suggestion or  
12 interference from the FBI.

13 Q. BY MR. SAUER: But my question's a little  
14 different, which is what -- my question is: Part  
15 of the purpose from the FBI's perspective is to  
16 give them the tools to assess and potentially take  
17 down accounts that the FBI has deemed to be  
18 inauthentic, correct?

19 MR. SUR: Objection; lacks foundation,  
20 calls for speculation.

21 Q. BY MR. SAUER: You may answer.

22 A. So I would say -- inauthentic -- so my  
23 focus is on Russian state-sponsored, -controlled  
24 accounts. And so whether the companies take them  
25 down or not, it's their own choice.

1           Q.     Right, but is it your purpose in giving  
2     them the information that the FBI believes or has  
3     concluded that they are Russian-operated accounts,  
4     is it your purpose to equip them to take them down  
5     if they end up agreeing with your assessment?

6           MR. SUR:   Objection; lacks foundation,  
7     calls for speculation.

8           THE WITNESS:   My purpose is to share the  
9     information with them so that they can protect  
10    their platforms as they deem appropriate.

11          Q.     BY MR. SAUER:   And one way to protect  
12    their platforms is to take down these accounts,  
13    correct?

14          A.     That is correct.

15          Q.     And, in fact, that's what you say here in  
16    this sentence, right? You say that, "the U.S.  
17    government and social media companies effectively  
18    impeded their influence campaigns...through  
19    information sharing and account takedowns," right?

20          A.     I said that. You can see -- I put  
21    "respectively" because it was the U.S. government,  
22    specifically the FBI, sharing information; and it  
23    was the social media companies doing the account  
24    takedowns.

25          Q.     Right. And the joint result of that was

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1     **effectively impeding Russian influence campaigns,**  
2     **correct?**

3           A.     Correct.

4           Q.     And -- and that's FITF's goal, right? To  
5     **effectively impede Russian influence campaigns,**  
6     **right?**

7           MR. SUR:   Objection; lacks foundation,  
8     calls for speculation.

9           THE WITNESS:   Yeah, FITF -- my  
10    understanding of FITF's goal is to counter malign  
11    foreign-influence campaigns.

12          Q.     BY MR. SAUER:   Does that include  
13    **effectively impeding their influence campaigns, as**  
14    **you say in your thesis?**

15          A.     Yes.

16          Q.     Does that include doing so through account  
17    **takedowns by information sharing with social media**  
18    **platforms?**

19          MR. SUR:   Objection; lacks foundation,  
20    mischaracterizes the testimony.

21          THE WITNESS:   Yeah, I believe you're  
22    mischaracterizing.   So like I said before, the FBI  
23    shares information with no strings attached and no  
24    expectations to -- for the companies.   And the  
25    companies, they can protect their own platforms.

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1 MR. SAUER: I am going to jump ahead to  
2 page little Roman xvii.

3 You can see there, Indraneel, it's going  
4 to be on Page 19 of the PDF. See that?

5 MR. SUR: Yep. Yeah, we're on it.

6 Q. BY MR. SAUER: Okay. I believe this is a  
7 kind of summary section of your thesis. You talk  
8 about in this paragraph here that begins with, "The  
9 U.S. government's response," that I have  
10 highlighted; do you see that?

11 A. Yes.

12 Q. And you say, "The U.S. government's  
13 response to the Russian influence campaign appeared  
14 more robust before the 2020 elections than in the  
15 2016 or 2018 elections," correct?

16 A. Correct.

17 Q. And then in the next sentence, you say,  
18 "The most important actions taken by the U.S.  
19 government may have been the information sharing  
20 with the social media companies to expose Russia's  
21 different operations and shut down its accounts,"  
22 correct?

23 A. Correct.

24 Q. So the information sharing was done, "To  
25 expose Russia's different operations and shut down



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1     **its accounts," right?**

2           A.     Correct.

3           **Q.     And then "its" refers to Russia, right?**  
4     **So (as read) "to expose Russia's different**  
5     **operations and shut down Russia's accounts,"**  
6     **correct?**

7           A.     Correct.

8           **Q.     I am going to jump ahead a few pages to**  
9     **Page xxii.**

10           MR. SAUER:   And, Indraneel, if you're  
11     following on your iPad, that's going to be Page 24  
12     of the PDF.

13           **Q.     There's a reference here in the**  
14     **acknowledgments where you refer to, "My colleagues**  
15     **back at headquarters who were in the trenches with**  
16     **me as we worked to protect the 2020 elections."**  
17     **See that?**

18           A.     Yes.

19           **Q.     Okay.  What are you talking about there**  
20     **where it says (as read), "in the trenches with you**  
21     **as you worked to protect the 2020 elections"?**

22           A.     I'm referring to my colleagues  
23     specifically at the Foreign Influence Task Force  
24     who participated in the meetings with me, who  
25     provided briefings to the companies and who

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1 coordinated the information sharing.

2 **Q. And so you said you had meetings with the**  
3 **companies. What meetings did you have?**

4 A. We had -- let me be more clear. I hosted  
5 meetings, bilateral meetings between each of the  
6 companies I mentioned and the Foreign Influence  
7 Task Force.

8 And we would also bring in field offices  
9 that had investigations related to malign foreign  
10 influence by state-sponsored actors. We would also  
11 bring in field offices that had cyber  
12 investigations. And when I mean cyber  
13 investigations, I mean state-sponsored actors that  
14 the FBI was investigating that we believe were  
15 capable of hack-and-dump campaigns that we observed  
16 in the 2016 election.

17 **Q. Okay. Let me unpack that a bit.**

18 **First of all, you said there were meetings**  
19 **with social media companies, between you and social**  
20 **media companies during the 2020 election cycle,**  
21 **correct? Is that what we're talking about?**

22 A. Yes, that is correct.

23 **Q. Now, did those meetings also continue in**  
24 **the 2022 election cycle?**

25 A. Yes. They occur at roughly a quarterly

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1 cadence.

2 Q. And then do they -- does the cadence  
3 increase as elections get close?

4 A. Yes, they do. And --

5 Q. Now, does that become monthly as the  
6 election nears and then weekly very close to the  
7 elections?

8 A. Ahead of the 2020 elections, that is  
9 correct. Ahead of the 2022 elections, we moved it  
10 from quarterly to monthly, and then we just had one  
11 meeting a week ahead of the midterm elections.

12 Q. I'm sorry. You said you had one weekly  
13 meeting ahead of the midterm elections?

14 A. Right. We had one meeting a week before  
15 the midterm elections.

16 Q. Oh, and how long was the -- how long was  
17 that period of weekly meetings? Was that, like,  
18 the month before or the three months before?

19 A. No. Just the week before the election  
20 itself.

21 Q. Oh, okay. There was one weekly meeting,  
22 right, the week before the election?

23 A. Yeah. There was -- yeah. So there was a  
24 monthly meeting in October; and then we had another  
25 meeting out of -- you know, out of cadence the week

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1 before the election, so the end of October.

2 Q. And then are these meetings going back to  
3 quarterly now that the election has passed?

4 A. That is correct.

5 Q. And so you're -- you'll have quarterly  
6 meetings with the social media companies going  
7 forward until the 2024 election cycle gets closer?

8 A. That is what I anticipate.

9 Q. And then as that election gets closer,  
10 then you'll move to monthly and eventually weekly a  
11 couple years from now, or in the fall of 2024; is  
12 that fair to say?

13 MR. SUR: Objection; calls for  
14 speculation.

15 THE WITNESS: That is what I anticipate.

16 Q. BY MR. SAUER: Let me ask you this: What  
17 social media companies are involved in these  
18 meetings?

19 MR. SUR: Objection; vague.

20 THE WITNESS: Currently or in 2020?

21 Q. BY MR. SAUER: Well, let's start with  
22 2020. I'd like to know both. Let's start with  
23 2020, please.

24 A. So for the 2020 elections, we regularly  
25 met with Facebook, Google, Twitter, Yahoo!, Reddit

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1 they take it very seriously. And I would say that  
2 to the best of their ability, they are very careful  
3 before doing account takedowns.

4 Q. BY MR. SAUER: I think that ties back into  
5 something you said earlier, which was in 2016 they  
6 really didn't do any account takedowns, fair to  
7 say?

8 A. That is correct.

9 Q. And it -- and I take it they may have had  
10 a -- I -- we may be speculating here, if you know.  
11 Do you know if that was because they have a  
12 financial incentive to leave those accounts up  
13 because it increases their ad revenues?

14 MR. SUR: Objection; calls for  
15 speculation.

16 THE WITNESS: I wouldn't even begin to  
17 speculate. I don't know why.

18 Q. BY MR. SAUER: Let me ask you this: Why  
19 did things change, in your view? I take it in 2018  
20 and 2020 there were many more account takedowns,  
21 right?

22 A. So there are two parts to your question.  
23 Why do I think they did it? I can provide you with  
24 my personal opinion.

25 Q. Okay.

1           A.    My -- I believe pressure from Congress,  
2   specifically HPSCI and SSCI, may have had a part of  
3   it.

4                   And then also because I believe that they  
5   felt that this may have damaged their brands, but  
6   that is my personal opinion.

7           **Q.    Okay. Well, let me ask you this: When**  
8   **you say "pressure from Congress" and you mentioned**  
9   **HPSCI and SSCI, what are HPSCI and SSCI? Are**  
10   **those -- are those committees?**

11          A.    I'm sorry. HPSCI is the -- the House  
12   Permanent Select Committee on Intelligence. And  
13   SSCI is the Senate Select Committee on  
14   Intelligence.

15          **Q.    Starting with the House Permanent Select**  
16   **Committee on Intelligence, what kind of pressure**  
17   **did they put on the social media platforms to, you**  
18   **know, engage more aggressively in account**  
19   **takedowns?**

20          A.    They compelled -- I don't know if they  
21   compelled. They requested the CEOs for the  
22   companies that I mentioned, the -- to testify in  
23   front of their committee.

24          **Q.    And so they kind of brought in Mark**  
25   **Zuckerberg and Jack Dorsey and Sundar Pichai and**

1 had them testify in front of Congress?

2 A. That is correct.

3 Q. And that happened -- that happened once or  
4 it happened multiple times?

5 A. To my knowledge, that happened more than  
6 once.

7 Q. And you believe that that -- that that  
8 kind of scrutiny and public pressure from Congress,  
9 in your view, motivated them to be more aggressive  
10 in the account takedowns?

11 MR. SUR: Objection; lacks foundation,  
12 calls for speculation.

13 THE WITNESS: That is just my personal  
14 opinion.

15 Q. BY MR. SAUER: Yeah. What is the basis  
16 for your opinion? Has anyone at a social media  
17 platform ever made a comment to you that would  
18 reflect that -- that view?

19 A. I would say yes. And the types of  
20 comments that I have received are that staffers  
21 from both of those committees have visited with  
22 those companies. And while they would not reveal  
23 the types of discussions that they had with these  
24 House and Senate staffers, they would indicate that  
25 they had to prepare very thoroughly for these types

1 of meetings and that it was -- they indicated that  
2 it felt like a lot of pressure.

3 **Q. "They" is representatives of social media**  
4 **platforms?**

5 A. Yeah. The social media companies that  
6 were visited.

7 **Q. What -- what social media companies were**  
8 **visited by these HPSCI and SSCI staffers?**

9 A. To my knowledge, it was the three  
10 companies that I've mentioned, which include  
11 Facebook, Google and Twitter.

12 **Q. And Facebook, Google and -- Facebook,**  
13 **Google and Twitter employees all told you that they**  
14 **experienced these visits from congressional**  
15 **staffers as exercising a lot of pressure on them?**

16 A. That was how I interpreted their comments.

17 **Q. And then you infer from that that their**  
18 **changes in takedown policies resulted from that**  
19 **kind of pressure from Congress?**

20 A. That is my personal opinion.

21 If I can add, I think some of -- some of  
22 what was discussed -- I'm interpreting what -- some  
23 of what was discussed. But what the -- the  
24 staffers would come and talk to us either before or  
25 after they met with those three companies. And so



1 what was discussed with us was legislation that  
2 they were thinking about doing, and then asking for  
3 our opinion.

4 Q. Uh-huh. When you say "legislation that  
5 they were thinking about doing," what do you mean?

6 A. Legislation that either HPSCI or SSCI was  
7 thinking about doing.

8 Q. So HPSCI and SSCI, these committees on  
9 intelligence, their staffers would be communicating  
10 to the social media platforms Facebook, Twitter and  
11 Google or YouTube that they intended to try and  
12 pass legislation?

13 A. So I inferred that because that is what  
14 they discussed with me personally.

15 Q. That is what they, the social media  
16 platforms, discussed with you, correct?

17 A. No, no. That is what HPSCI and SSCI  
18 discussed with me when they were coming to these  
19 meetings.

20 Q. Oh, did you -- were you in on these  
21 meetings? Like, were you included in the meetings  
22 with the congressional staffers?

23 A. So I and FBI San Francisco personnel would  
24 meet with the congressional staffers, typically  
25 before they met or after they met with the social

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1

DEPOSITION OFFICER'S CERTIFICATE

2 STATE OF CALIFORNIA )

3 ) ss.

4 COUNTY OF SAN FRANCISCO)

5

6 I, Balinda Dunlap, hereby certify:

7 I am a duly qualified Certified Shorthand  
8 Reporter in the State of California, holder of  
9 Certificate Number CSR 10710 issued by the Certified Court  
10 Reporters' Board of California and which is in full  
11 force and effect. (Fed. R. Civ. P. 28(a)(1)).

12 I am authorized to administer oaths or  
13 affirmations pursuant to California Code of Civil  
14 Procedure, Section 2093(b) and prior to being examined,  
15 the witness was first duly sworn by me. (Fed. R. Civ.  
16 P. 28(a)(a)).

17 I am not a relative or employee or attorney or  
18 counsel of any of the parties, nor am I a relative or  
19 employee of such attorney or counsel, nor am I  
20 financially interested in this action. (Fed. R. Civ. P.  
21 28).

22 I am the deposition officer that  
23 stenographically recorded the testimony in the foregoing  
24 deposition and the foregoing transcript is a true record

25 / / /

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1 of the testimony given by the witness. (Fed. R. Civ. P.  
2 30(f)(1)).

3 Before completion of the deposition, review of  
4 the transcript [ ] was [ ] was not requested. If  
5 requested, any changes made by the deponent (and  
6 provided to the reporter) during the period allowed, are  
7 appended hereto. (Fed. R. Civ. P. 30(e)).

8

9 Dated:



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## EXHIBIT P

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**From:** [REDACTED]@twitter.com]  
**Sent:** 1/23/2021 1:08:36 AM  
**To:** Humphrey, Clarke EOP/WHO [REDACTED]@who.eop.gov]  
**CC:** [REDACTED]@twitter.com]; Flaherty, Robert EOP/WHO [REDACTED]@who.eop.gov]  
**Subject:** [EXTERNAL] Re: Flagging Hank Aaron misinfo

Thanks. We recently escalated this.

On Fri, Jan 22, 2021 at 8:05 PM Humphrey, Clarke EOP/WHO [REDACTED]@who.eop.gov> wrote:  
Hey folks —

Wanted to flag the below tweet and am wondering if we can get moving on the process for having it removed ASAP:

><https://twitter.com/RobertKennedyJr/status/1352748139665645569><

And then if we can keep an eye out for tweets that fall in this same ~genre that would be great.

Thanks!  
Clarke

--

[REDACTED]  
Twitter, Inc. | Public Policy  
[@TwitterGov](#) & [@Policy](#)

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14 Attorneys for Plaintiff,  
15 ROBERT F. KENNEDY, JR.

16 **UNITED STATES DISTRICT COURT**  
17 **NORTHERN DISTRICT OF CALIFORNIA**

18 ROBERT F. KENNEDY, JR.,

19 Plaintiff,

20 vs.

21 GOOGLE LLC, a Delaware  
22 corporation, and YOUTUBE, LLC, a  
23 Delaware corporation,

24 Defendants.

Case No. 5:23-cv-03880-NC

[Assigned to the Honorable Nathanael  
Cousins]

**DECLARATION OF ROBERT F.  
KENNEDY, JR.**

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**DECLARATION OF ROBERT F. KENNEDY, JR.**

I, Robert F. Kennedy, Jr. declare as follows:

1. I am the plaintiff in this matter, a member of the Democratic Party and a candidate for President of the United States. I have personal knowledge of the facts set forth in this declaration and could testify competently to them if called to do so.

2. I am submitting this declaration in support of my application for a temporary restraining order or, in the alternative, an order to show cause regarding the issuance of a preliminary injunction, prohibiting Defendants Google LLC and YouTube, LLC, from using its COVID-19 and vaccine misinformation policies to censor videos of me speaking on matters of public concern during my campaign.

3. I have spoken regularly about the safety and efficacy of vaccines over the past decade. Videos of my comments were often posted on YouTube. To my knowledge, none of those videos were removed from YouTube until the COVID-19 pandemic. Indeed, to my knowledge, I was not censored on YouTube until 2021, after Joe Biden took office and after Google adopted a new policy, dubbed the “vaccine misinformation policy.” That is the policy that Google has cited most frequently during the past two years when removing videos of my speech on matters of public concern.

4. Facebook and Twitter stopped censoring me after I declared my presidential candidacy. Google did not. Although Google does not censor all videos of me, it has removed several high-profile speeches and interviews I gave, including my pre-announcement speech at the New Hampshire Institute of Politics and interviews I gave to Joe Rogan and Jordan Peterson.

5. Google’s actions have created a chilling effect surrounding my campaign. I often hear from people who say they posted a video of me speaking that Google then removed from YouTube. Although some wear that as a badge of honor, others say that Google’s actions have deterred them from posting other content related to me.

1           6.       This censorship, and the chilling effect it creates, have created hurdles for  
2 my campaign. Those hurdles would be great under ordinary circumstances, but they  
3 are even greater given that I am challenging an incumbent president whose  
4 administration, according to evidence gathered in other cases, targeted me  
5 specifically. I believe this censorship will increase as the primaries get closer and that  
6 injunctive relief is the only thing that will prevent voters from having an unfettered  
7 chance to hear my views before they cast their ballots.

8           Under penalty of perjury, under the laws of the United States of America, I  
9 declare that the foregoing is true and correct. Executed this 8th day of August 2023, at  
10 North Sandwich, New Hampshire.



Robert F. Kennedy, Jr.



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14 Attorneys for Plaintiff,  
15 ROBERT F. KENNEDY, JR.

16 **UNITED STATES DISTRICT COURT**  
17 **NORTHERN DISTRICT OF CALIFORNIA**

18 ROBERT F. KENNEDY, JR.,

19 Plaintiff,

20 vs.

21 GOOGLE LLC, a Delaware  
22 corporation, and YOUTUBE, LLC, a  
23 Delaware corporation,

24 Defendants.

Case No. 5:23-cv-03880-NC

[Assigned to the Honorable Nathanael  
Cousins]

**DECLARATION OF AMARYLLIS  
KENNEDY**

25 ///

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///

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**DECLARATION OF AMARYLLIS KENNEDY**

I, Amaryllis Kennedy, declare as follows:

1. I am over the age of 18 and a senior adviser for Team Kennedy, the organization formed by my father-in-law, Robert F. Kennedy, Jr., to support his campaign for President of the United States. I have personal knowledge of the facts set forth in this declaration and could testify competently to them if called to do so.

2. I am submitting this declaration in support of Bobby's application for a temporary restraining order or, in the alternative, an order to show cause regarding the issuance of a preliminary injunction, prohibiting Defendants Google LLC and YouTube, LLC, from using its COVID-19 and vaccine misinformation policies to censor videos of him speaking on matters of public concern during the campaign.

3. Bobby has spoken regularly about the safety and efficacy of vaccines over the past decade. To my knowledge, he was not censored on YouTube until 2021, after Google adopted a new policy, dubbed the "vaccine misinformation policy." That is the policy that Google has cited most frequently during the past two years when removing videos his speech on matters of public concern, including speeches he has made, and interviews he has given, during his political campaign.

4. Although Google does not censor all videos of Bobby speaking, it has removed several high-profile speeches and interviews he has given during the campaign, including a speech at the New Hampshire Institute of Politics and interviews he gave to Joe Rogan and Jordan Peterson.

5. For example, attached to this declaration as **Exhibit "A"** is a true and correct copy of an email one of Bobby's supporters sent the campaign after Google removed his posting of the Rogan interview. The campaign receives similar reports from people on a near daily basis.

6. Google's actions have created a chilling effect surrounding the campaign. I often hear from people who say that Google's actions have deterred them from



1 posting content about Bobby. The chilling effect is particularly bad because Google  
2 uses its vaccine misinformation policy to remove entire speeches and interviews,  
3 much of which have nothing to do with vaccines.

4 7. This censorship, and the chilling effect it creates, have created hurdles for  
5 the campaign. Since the mainstream media has largely avoided covering Bobby, the  
6 campaign relies heavily on ordinary people who post and share videos of Bobby  
7 speaking on matters of public concern. YouTube is by far the largest platform for  
8 sharing such videos. And I suspect that Google's censorship of Bobby's speech will  
9 increase after Labor Day, as the campaign gets into full swing and the primaries draw  
10 closer.

11 8. The campaign has repeatedly asked Google to stop censoring Bobby's  
12 speech on matters of public concern during the political campaign. It has refused. It  
13 insists that it has the right to censor Bobby, even as a political candidate. That is not all.  
14 As a general matter, Google allows public figures to control the "Google Knowledge"  
15 box that appears on the right side of an internet page, or the top of the page when  
16 viewing it on a mobile device, in response to a search result. However, despite  
17 repeated requests to Google, the campaign has not been allowed to control the box for  
18 Bobby. Thus, the knowledge box contains several pieces of inaccurate information  
19 about Bobby. I believe this is indicative of Google's general hostility to Bobby's  
20 campaign and an example of why Google will not change its behavior unless a court  
21 orders it to.

22 Under penalty of perjury, under the laws of the United States of America, I  
23 declare that the foregoing is true and correct. Executed this 8th day of August 2023, at

24 8:12 PM  
25 Los Angeles, CA



26  
27 Amaryllis Kennedy

EXHIBIT “A”

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

----- Forwarded message -----

[REDACTED]

Date: Sat, Jun 17, 2023 at 11:35

Subject: Re: 📢 YouTube removed your content

[REDACTED]

They rejected my appeal:



Hi [REDACTED]

We have reviewed your appeal for the following:

**Video:** RFK Jr on Rogan - Pfizer COVID Vaccine Trial

We reviewed your content carefully, and have confirmed that it violates our medical misinformation policy. We know this is probably disappointing news, but it's our job to make sure that YouTube is a safe place for all.

**How does this impact your content**

- We won't be putting your content back up on YouTube.
- If your appeal was for a warning, you will not be given another warning in the future.
- If your appeal was for a strike, the strike will remain on your channel.

You can find more information about warnings and strikes at the YouTube Help Center.

Thanks,  
The YouTube team

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

----- Forwarded message -----

From: YouTube <no-reply@youtube.com>

Date: Sat, Jun 17, 2023 at 8:38 AM

Subject: 📢 YouTube removed your content

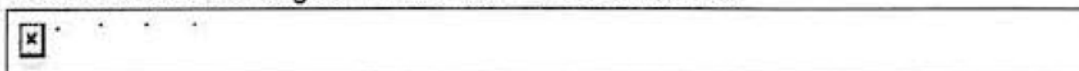
[REDACTED]



Hi [REDACTED]

Our team has reviewed your content, and, unfortunately, we think it violates our **medical misinformation policy**. We've removed the following content from YouTube:

**Video:** RFK Jr on Rogan - Pfizer COVID Vaccine Trial



We know that this might be disappointing, but it's important to us that YouTube is a safe place for all. If content breaks our rules, we remove it. If you think we've made a mistake, you can appeal and we'll take another look. Keep reading for more details.

### How your content violated the policy

YouTube doesn't allow claims about COVID-19 vaccinations that contradict expert consensus from local health authorities or the World Health Organization (WHO).

[LEARN MORE](#)

**How this affects your channel**



Because it's the first time, this is just a warning. If it happens again, your channel will get a strike and you won't be able to do things like upload, post, or live stream for 1 week.

### What to do next

We want to help you stay on YouTube, so please:

- Make sure you understand YouTube's Community Guidelines and strikes basics.
- Review your content with our policies in mind. If after reviewing your content you think we made a mistake, let us know. You can appeal this decision [here](#).

Sincerely,

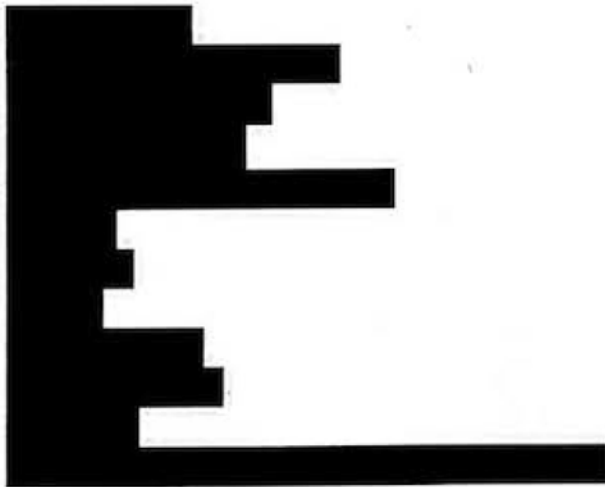
The YouTube Team

[Help Center](#) • [Email options](#)

You have received this email to update you on actions related to your YouTube account.

Was this email helpful? Yes | No

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Attorneys for Plaintiff,  
ROBERT F. KENNEDY, JR.

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

ROBERT F. KENNEDY, JR.,

Plaintiff,

vs.

GOOGLE LLC, a Delaware  
corporation, and YOUTUBE, LLC, a  
Delaware corporation,

Defendants.

Case No. 5:23-cv-03880-NC

[Assigned to the Hon. Nathanael  
Cousins]

**[PROPOSED] TEMPORARY  
RESTRAINING ORDER AND  
ORDER TO SHOW CAUSE RE  
ISSUANCE OF PRELIMINARY  
INJUNCTION**

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**ORDER**

Having considered the application for a temporary restraining order filed by Plaintiff Robert F. Kennedy, Jr., and all related documents and argument, and good cause appearing, the Court orders as follows:

1. The application is granted.
2. Defendants Google LLC and YouTube, LLC, and all their agents and employees are temporarily enjoined from using either the “Vaccine misinformation policy” or the “COVID-19 medical misinformation policy” to remove videos of Mr. Kennedy’s speech from YouTube.
3. The Court also orders Defendants to show cause why a preliminary injunction should not be issued enjoining them and their agents and employees from using either the “Vaccine misinformation policy” or the “COVID-19 medical misinformation policy” to remove videos of Mr. Kennedy’s speech from YouTube while he is a candidate for president of the United States and pending a trial on the merits in this action.
4. Mr. Kennedy shall serve a copy of this Order plus all supporting pleadings and papers on Defendants by \_\_\_\_\_, 2023.
5. The hearing on the OSC re issuance of a preliminary injunction shall be scheduled for \_\_\_\_\_, 2023, at \_\_\_\_\_. It will be held at \_\_\_\_\_. Defendants shall file their opposition papers by \_\_\_\_\_, 2023. Mr. Kennedy shall file his reply papers by \_\_\_\_\_, 2023.

IT IS SO ORDERED.

Dated: \_\_\_\_\_

\_\_\_\_\_  
U.S. MAGISTRATE JUDGE

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Attorneys for Plaintiff,  
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**UNITED STATES DISTRICT COURT  
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Delaware corporation,

Defendants.

Case No. 5:23-cv-03880-NC

[Assigned to the Hon. Nathanael  
Cousins]

**CERTIFICATE OF SERVICE**

[Filed concurrently with Application for  
TRO; MP&A, Dec. of Robert F.  
Kennedy, Jr., Dec. of Amaryllis  
Kennedy and Dec. of Scott J. Street;  
[Proposed] TRO and [Proposed] OSC  
lodged concurrently]

///

///

///

## **CERTIFICATE OF SERVICE**

At the time of service, I was over 18 years of age and not a party to this action. I am employed by JW Howard/Attorneys, LTD. in the County of San Diego, State of California. My business address is 600 West Broadway, Suite 1400, San Diego, California 92101.

On August 9, 2023, I caused the:

1. APPLICATION FOR TEMPORARY RESTRAINING ORDER;  
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
2. DEC. OF SCOTT J. STREET
3. DEC. OF ROBERT F. KENNEDY, JR.
4. DEC. OF AMARYLLIS KENNEDY
5. [PROPOSED] TEMPORARY RESTRAINING ORDER AND ORDER TO  
SHOW CAUSE RE ISSUANCE OF PRELIMINARY INJUNCTION

to be filed and served via personal service by Knox Attorney Service upon BECKY DEGEORGE, the agent for service for Google LLC and YouTube LLC, located at 2710 Gateway Oaks Drive, Sacramento, CA 95833.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on August 9, 2023 at San Diego, California.

/s/ Dayna Dang  
Dayna Dang, Paralegal  
[dayna@jwhowardattorneys.com](mailto:dayna@jwhowardattorneys.com)

# EXHIBIT H

Pages 1 - 53

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Trina L. Thompson, Judge Presiding

|                                |   |                           |
|--------------------------------|---|---------------------------|
| ROBERT F. KENNEDY, JR.,        | ) |                           |
|                                | ) |                           |
| Plaintiff,                     | ) |                           |
|                                | ) |                           |
| VS.                            | ) | <b>NO. C 23-03880 TLT</b> |
|                                | ) |                           |
| GOOGLE LLC, a Delaware         | ) |                           |
| corporation, and YOUTUBE, LLC, | ) |                           |
| a Delaware corporation,        | ) |                           |
|                                | ) |                           |
| Defendants.                    | ) |                           |
| _____                          | ) |                           |

San Francisco, California  
Monday, August 21, 2023

**TRANSCRIPT OF PROCEEDINGS**

**APPEARANCES:**

For Plaintiff:

JW HOWARD/ATTORNEYS  
201 South Lake Avenue, Suite 303  
Pasadena, California 91101  
**BY: SCOTT J. STREET**  
**ATTORNEY AT LAW**

For Defendant:

MUNGER, TOLLES & OLSON LLP  
560 Mission Street - 27th Floor  
San Francisco, California 94105  
**BY: JONATHAN H. BLAVIN**  
**JULIANA MARIKO YEE**  
**ATTORNEYS AT LAW**

Stenographically Reported By:  
Kelly Shainline, CSR No. 13476, RPR, CRR  
Official Reporter

Monday - August 21, 2023

9:56 a.m.

P R O C E E D I N G S

---000---

**THE CLERK:** Now calling Case Number 23-cv-03880, Kennedy, Jr. versus Google, LLC, et al.

Counsel, will you please come forward to the podium and state your appearances, beginning with the plaintiff.

**ATTORNEY STREET:** Good morning, Your Honor. Scott Street for the plaintiff, Mr. Kennedy.

**THE COURT:** Good morning.

**ATTORNEY BLAVIN:** Good morning, Your Honor. Jonathan Blavin for defendants Google and YouTube.

**ATTORNEY YEE:** Good morning, Your Honor. Juliana Yee on behalf of Google and YouTube.

**THE COURT:** Good morning. And pleasure to meet you all. And I'm glad that there were safe travels coming from Burbank as well as the streets of San Francisco. So pleasure to see everyone.

All right. This matter is before the Court for an application of a temporary restraining order. Plaintiff has filed an application for a prospective temporary restraining order to enjoin Google and YouTube from using its misinformation policies during the 2024 presidential campaign.

Counsel, if you'll please approach, I'm going to have some general rules. Those of you who are going to be presenting to

1 the Court should approach the podium so that you can be heard  
2 by the Court as well as our court reporter. Thank you.

3 For those who may be unfamiliar with this Court, I will  
4 generally give a recitation of what I believe the facts to be  
5 and allow you to provide correction during your presentation.

6 I will also have a list of questions and some I will  
7 intermittently pose to you. Please understand if I'm asking  
8 these questions, these are questions that are relevant to my  
9 ultimate decision.

10 I've read all of the briefing as well as the cases that  
11 you've recited in your briefing, and I'm very clear in terms of  
12 the standard of a temporary restraining order.

13 So, counsel, I'll note that the Court will have as one of  
14 its first questions is why is this an emergency given the lapse  
15 of time? So please take that into consideration.

16 Now, on January 23rd, 2021, Twitter, not YouTube, removed  
17 a tweet from Mr. Kennedy's Twitter account. The takedown was  
18 precipitated by an e-mail sent before from Clarke Humphrey of  
19 the White House office flagging the tweet and asked if we can  
20 get moving on the process for having it removed. This is based  
21 on the motion and declaration filed by Mr. Street.

22 This is a fact that I believe supports documentation of  
23 *Missouri v. Biden*, but I want to note that Mr. Kennedy had  
24 filed a motion to intervene and I believe that motion was  
25 denied on January 10th, 2023, by the District Court Western



1 Division of Louisiana, Monroe Division.

2 Now the facts that are relevant to this case are as  
3 follows and those of which the Court is asked to consider.

4 Mr. Kennedy announced his candidacy on April 19th, 2023. He  
5 spoke earlier, a month prior, at Saint Amselm College in  
6 New Hampshire Institute of Politics on March -- in March of  
7 2023. I do -- I would like to know the actual date.

8 The speech centered around Mr. Kennedy's concern about the  
9 merger of corporate and state power as it related to vaccines  
10 that children are asked to take.

11 He spoke about the environmental and legal work fighting  
12 corporate polluters. And this is based on the motion pages 9  
13 through 10, and counsel, Mr. Street's declaration paragraph 4.

14 Manchester Public Television posted a video of the speech,  
15 and YouTube removed it. This is according to the declaration  
16 filed by Mr. Street.

17 Once again, Mr. Kennedy announced his candidacy a month  
18 later on April 19th, 2023. And he's seeking the Democratic  
19 Party's nomination for President. He has filed the necessary  
20 paperwork within the Federal Election Commission and is taking  
21 steps to qualify for the ballot in early primary states  
22 including New Hampshire.

23 Now then YouTube removed a video of an interview with  
24 podcast host Jordan Peterson and comedian Joe Rogan after he  
25 announced his candidacy. On June 17th, YouTube removed the

1 video titled "RFK on Joe Rogan, Pfizer COVID Vaccine Trial,"  
2 and this is based upon the declaration in Exhibit A, Amaryllis  
3 Kennedy.

4 Kennedy does not identify what video interview with Jordan  
5 Peterson was taken down, the topics of the interview, what date  
6 it was posted, or what date it was taken down.

7 On the 4th of July, 2023, the decision in *Missouri v.*  
8 *Biden* was filed. The appeal was filed on July 6th, 2023.  
9 Defendant's motion to stay during appeal was denied on  
10 July 10th. Oral arguments for the appeal were held on  
11 August 10th, 2023.

12 Plaintiff filed his complaint on August 8th, 2023, and his  
13 TRO application on August 9th, 2023.

14 Now then, counsel, I invite you to share any additional  
15 facts that you believe are relevant to the Court in making this  
16 final decision and whether to grant a TRO.

17 There are standards of which the Court would like to know  
18 which do you feel are the appropriate standards to apply,  
19 keeping in mind that *Missouri v. Biden* at best is persuasive.  
20 *O'Handley v. Weber* found at 62 F.4th 1143, decided in 2023 by  
21 our Ninth Circuit, is the case that the Court will follow. And  
22 the Court would like to know which of the tests in that case  
23 you feel is appropriate.

24 What date in March of 2023 did Mr. Kennedy give his  
25 speech? What date did Manchester Public Television post

1 Mr. Kennedy's speech? On what date was Mr. Kennedy's speech  
2 taken down by YouTube? How many other videos of Mr. Kennedy  
3 have been taken down by YouTube, if any? And please precisely  
4 indicate the date and the content.

5 Twitter, who is not a party to this case, allegedly  
6 removed a video of Mr. Kennedy on January 23rd, '21. Was this  
7 video also posted to YouTube, and did YouTube remove it?

8 Now, I do have other questions. And we'd like to start  
9 with under which test for determining a state actor does  
10 plaintiff suggest in controlling this case and why in terms of  
11 the decision that I will be making today?

12 So, counsel, I have a number of other questions, but those  
13 are kind of the broad stroke. Please correct me on any facts  
14 that I may have stated in error. Speak as slowly as possible  
15 for our court reporter. And, please, I ask that neither party  
16 speak over one another so we have a clear record.

17 **ATTORNEY STREET:** Okay. Thank you, Your Honor. And  
18 thank you for obviously putting a lot of time into this.

19 I know it was done on short notice, and thank you for  
20 indulging my efforts to get here in person so -- which  
21 fortunately were successful.

22 **THE COURT:** You're welcome. And as you can tell from  
23 your binder behind you, every page has been read.

24 **ATTORNEY STREET:** I appreciate that, by you and by me.  
25 Thank you, Your Honor.

1           There were a lot of questions that the Court posed. So  
2 I'm going to start with the question that Your Honor -- the  
3 last question that you asked, which is which test applies here.

4           And I want to emphasize that under -- that both the Ninth  
5 Circuit and the Supreme Court have said that the tests are  
6 really guides to use in determining whether private action --  
7 otherwise private action is, quote, fairly attributable to the  
8 state. That's the standard that the Supreme Court laid out in  
9 the *Brentwood* -- in the *Brentwood* case in 2002. And the Ninth  
10 Circuit has mentioned that several times including in *O'Handley*  
11 and in the *Rawson v. Recovery* case that we cited in our brief.

12           Of the tests that are used, I think here the joint action  
13 and the nexus tests are the most on point because of the  
14 significant parent coordination between Google, YouTube, and  
15 the government in developing particularly the vaccine  
16 misinformation policy, which is the one that has been cited  
17 when removing my speech -- my client's speech from YouTube.

18           That policy was drafted and the evidence that was  
19 developed in *Missouri v. Biden* case showed that that policy was  
20 developed by Google in 2020 -- I believe 2021 in response to  
21 the government's demands for it.

22           **THE COURT:** If I could interrupt, and I apologize  
23 because I want to make sure our record is clear. You indicated  
24 that the joint action test along with the nexus test which has  
25 two separate tests under nexus, under the nexus test.

1           **ATTORNEY STREET:** Yes.

2           **THE COURT:** And please identify which one.

3           With regards to the user agreement, and you misspoke and  
4           said your speech as opposed to Mr. Kennedy's speech. Did  
5           Mr. Kennedy sign the user agreement when he became a consumer  
6           on the free YouTube platform? Did he sign the user agreement  
7           or agreed to it electronically?

8           **ATTORNEY STREET:** Well, as a -- as a user, yes, he  
9           signed it. But the issue in this case, Your Honor, is not  
10          YouTube taking down videos posted by Mr. Kennedy, but  
11          YouTube -- YouTube taking down videos of Mr. Kennedy's speech  
12          posted by third parties, including Manchester Public  
13          Television, including the individual whose name was redacted  
14          but we included the e-mail with our filing.

15          And so what that has done is, irrespective of  
16          Mr. Kennedy's post to YouTube themselves, Google's actions have  
17          created this chill effect where they have said essentially to  
18          third parties, including independent media, if you post videos  
19          of this man, this political candidate talking about these  
20          issues, your video is liable to be removed and you could be  
21          punished, given a strike, for violating our policy.

22          And so that's -- and I want to pull back for a second,  
23          Your Honor, to emphasize that what we're here for today is not  
24          just to protect my client, Mr. Kennedy's, rights but to protect  
25          the political process itself.

1           **THE COURT:** I understand. But you've now mentioned  
2 third parties, and does Mr. Kennedy have standing to represent  
3 those unknown third parties?

4           **ATTORNEY STREET:** Yes. In this context, Your Honor,  
5 in the political process, the Supreme Court's made very clear  
6 that where First Amendment rights are concerned and what the  
7 plaintiff is alleging is a chilling effect on speech, a  
8 plaintiff like Mr. Kennedy, who has clearly a concrete interest  
9 in this relief, has standing to pursue such relief.

10           We cited those cases in our brief, and I think they're  
11 especially appropriate in this context of the presidential  
12 campaign.

13           **THE COURT:** I don't know if you answered my earlier  
14 question with regards to the joint action and nexus test. I  
15 indicated that there are two versions of the nexus test. And  
16 do you plan to address both or just one?

17           **ATTORNEY STREET:** I do plan to address both,  
18 Your Honor. I just want to make sure that I have them -- I  
19 have them both so I don't -- I don't discuss them in a  
20 contrary -- contrary fashion.

21           So that the nexus test, the first one is the pervasive  
22 entwinement between public officials and the government, which  
23 I think is shown here by the evidence that's been developed in  
24 the *Missouri v. Biden* case, the interaction between Google and  
25 government officials in drafting the policy that it's been

1 using to remove my client's speech.

2 But the other one I think is even more appropriate, which  
3 is the government encouragement that's discussed in the  
4 *O'Handley* case at page 1158. And this really gets into -- and  
5 I think that second aspect of the nexus test overlaps with the  
6 joint action test. You can see that in *O'Handley*. It  
7 discusses the facts -- factors under each interchangeably.

8 And this is where, in *O'Handley*, the Ninth Circuit was  
9 very, very clear, Your Honor, that a constitutional problem  
10 would arise if Twitter had agreed to serve as an arm of the  
11 government thereby fulfilling the state's censorship goals.

12 Now that wasn't satisfied in *O'Handley*, Your Honor,  
13 because the only allegation in *O'Handley* was that a government  
14 agency was flagging tweets that the government believed  
15 violated a preexisting policy developed by Twitter to try to  
16 protect the sanctity of its platform in the civic process.

17 Here you don't have information -- you don't have flagging  
18 the one-way channel of communication that the Ninth Circuit  
19 discussed in *O'Handley*. Here you have actually evidence that  
20 Google developed this policy in response to government demands  
21 for it in apparent collaboration with government officials in  
22 writing it -- in writing it, at least that's what the evidence  
23 from the *Missouri v. Biden* case suggests.

24 And the policy itself is based entirely on what the  
25 government says. The policy says you cannot disagree with what

1 the government says about these issues.

2 And so that's why I think this case goes far beyond what  
3 the Ninth Circuit was dealing with in *O'Handley* and satisfies  
4 really both the nexus and the joint action test.

5 And more importantly, Your Honor, really shows that this  
6 policy that Google developed, it's not its own policy. It may  
7 not have been compelled by the government to adopt it, but it's  
8 a policy that looks entirely to the government to decide which  
9 information to remove. And I think under the Supreme --

10 **THE COURT:** So you agree that they were not compelled,  
11 that Google was not compelled by the government. Do you agree  
12 with that?

13 **ATTORNEY STREET:** Well, I haven't seen evidence yet to  
14 say that they were compelled. I know that that was shown in  
15 the *Missouri v. Biden* case.

16 **THE COURT:** And again, *Missouri v. Biden* is persuasive  
17 authority, not controlling, and *O'Handley* is the case that we  
18 are concerned about.

19 **ATTORNEY STREET:** That is true, Your Honor, and I will  
20 note, though, that the *Missouri v. Biden* case had an  
21 evidentiary record that did not exist in the *O'Handley* case or  
22 any of the other what I'll call censorship cases that were  
23 litigated in this court.

24 In fact, I think it's interesting that the allegations  
25 that were deemed implausible in *O'Handley* and similar cases,



1 the court developed -- the parties developed actually an  
2 evidentiary record in the *Missouri v. Biden* case which showed  
3 exactly what the Ninth Circuit said was implausible in these  
4 prior technology companies.

5 And I think that's very important because that's -- it was  
6 the record in that case that convinced the judge,  
7 Judge Doughty, and I think what convinced the Fifth Circuit  
8 that there was coercion.

9 We may develop that here, I don't know yet, and I don't  
10 want to argue coercion without having a good faith basis to do  
11 that. I think on the record we've established already, though,  
12 Your Honor, we have satisfied the joint action and nexus tests.  
13 We have shown that Google's policy is fairly attributable to  
14 the government. And we have shown that in the political  
15 process where the Supreme Court has always said more speech is  
16 better than less speech, that we have satisfied the burden.

17 And that brings me back to the first question that the  
18 Court asked about what is the emergency here? Now --

19 **THE COURT:** No, my first question was actually -- I'm  
20 going to go back to my questions because I need these answered.

21 What date in March of 2023 did Mr. Kennedy give his  
22 speech?

23 **ATTORNEY STREET:** So the date -- I should know this  
24 since I was there. If I remember correctly the date, it was  
25 March 3rd of 2023.

1           **THE COURT:** All right. And on what date did  
2 Manchester Public Television post his speech?

3           **ATTORNEY STREET:** The same day.

4           **THE COURT:** The same day.

5           And on what date was the video taken down?

6           **ATTORNEY STREET:** As I recall, the same date or one  
7 day later. Not simultaneously but within a day or two.

8           **THE COURT:** How many other videos by Mr. Kennedy have  
9 been taken down by YouTube, if you know?

10          **ATTORNEY STREET:** I know of at least half a dozen.

11          **THE COURT:** And can you identify that half dozen?

12          **ATTORNEY STREET:** Three of them were identified in  
13 our -- in our moving papers. There was an interview with  
14 Jordan Peterson that was posted and removed. There was -- and  
15 it was reported on publicly. There was a podcast that  
16 Mr. Kennedy did with Joe Rogan that was taken down.

17          And then I have since -- which is referred to in our  
18 moving papers -- and then I have since heard, received numerous  
19 e-mails, communications from other people who said -- who told  
20 me they have had similar content removed --

21          **THE COURT:** Well, no.

22                               (Simultaneous colloquy.)

23          **THE COURT:** -- I want to know the actual. So far I  
24 know of two. And one was with comedian Joe Rogan. And the  
25 date of that of which it was removed was what?

1           **ATTORNEY STREET:** I don't have the date offhand,  
2 Your Honor. I can look for that.

3           **THE COURT:** All right.

4           **ATTORNEY STREET:** I believe it was in early July.

5           **THE COURT:** And then with regards to podcast host  
6 Jordan Peterson, what day was this one taken down?

7           **ATTORNEY STREET:** Let me --

8           **THE COURT:** What was the date of the interview and  
9 what day was it taken down? The date of the interview with  
10 comedian Joe Rogan, and what date was that taken down?

11           **ATTORNEY STREET:** That is not something I don't have  
12 at the top of my head, Your Honor. So I have to look through  
13 my files to see if I have that.

14           **THE COURT:** All right. And then going back to my  
15 earlier question, because it's in your declaration, Twitter was  
16 not a party to this case, allegedly removed a video of  
17 Mr. Kennedy on January 23rd, 2021. Was this video also posted  
18 to YouTube, and did YouTube remove it?

19           **ATTORNEY STREET:** That question I don't have an answer  
20 to, Your Honor, but I would be happy to look and find out.

21           **THE COURT:** And then is the video of Mr. Kennedy at  
22 the college in New Hampshire still available to view online  
23 outside of YouTube?

24           **ATTORNEY STREET:** I have not looked so I do not know  
25 the answer to that. I know it is not available through

1 Manchester Public Television.

2           **THE COURT:** All right. Then that brings us to the  
3 topic that you want to address now, which is what grounds do  
4 you allege which makes this an urgent request? And was there  
5 any correlation between this request and its urgency driven by  
6 in any way the appeal taken in *Missouri v. Biden*?

7           **ATTORNEY STREET:** Well, the urgency, Your Honor, is  
8 twofold. First off, the Ninth Circuit and Supreme Court have  
9 always -- always recognized that First Amendment harms are  
10 different than other harms. And so as a general matter, they  
11 have applied these doctrines flexibly, recognizing that ongoing  
12 harms are actionable and that any chilling of speech is  
13 irreparable and --

14           **THE COURT:** But we waited from March to August. So  
15 I'm just trying to understand.

16           **ATTORNEY STREET:** Sure. Sure. And I understand. I'm  
17 going to tell you as a practical matter what -- what the reason  
18 for the delay, if there was a delay, was Mr. Kennedy believed  
19 strongly that during his political campaign, the technology  
20 companies would stop censoring him, recognizing the settled --  
21 settled principles that more speech, not enforced silence,  
22 rules in the political process.

23           Twitter and Facebook, in fact, changed the way they deal  
24 with him and have stopped censoring him during his presidential  
25 campaign. Google has not, despite repeated requests.

1           We believed after -- and going back to the *Missouri v.*  
2     *Biden* case, Your Honor noted that Mr. Kennedy moved to  
3     intervene in that case. That motion was denied, but he  
4     subsequently filed a lawsuit against the federal officials who  
5     were also named in that case. And he filed that case in  
6     Louisiana this spring.

7           And the judge, Judge Doughty in Louisiana, enforced --  
8     issued an order essentially saying that the same injunction  
9     that was issued in the State Attorney General case would apply  
10    to protect Mr. Kennedy, given the overlapping issues.

11          So --

12                 **THE COURT:** Okay. Well, I'm just trying to get some  
13     clarity for areas that were a little foggy for me. And I have  
14     no ego invested in this so I want to make sure I get this right  
15     and I'm clear.

16          The speech was early March of 2023. Mr. Kennedy announced  
17     his candidacy in April. But the urgency, as you're describing  
18     it, and the delay and his treatment by others have some nexus  
19     to this case, and I'm just trying to allow you to tease that  
20     out.

21          And then I may turn to Google after we get through a  
22     couple of other questions that I have and give you an  
23     opportunity to see if you can locate the dates I asked about  
24     earlier. But go ahead.

25                 **ATTORNEY STREET:** Sure. Well, the truth is,

1 Your Honor, I don't know why Google removes some of my client's  
2 speeches and not others.

3 **THE COURT:** Well, I'm just looking at the timeline and  
4 the urgency question.

5 **ATTORNEY STREET:** I understand. I understand.

6 So but that plays into my answer because it is my client  
7 and his campaign have repeatedly reached out to Google to  
8 prevent this from happening.

9 It doesn't -- he doesn't get censored completely, but  
10 certain high-profile speeches and interviews do get censored.

11 And so we realized really in late July or early August  
12 that Google was not changing its policies. And in fact in the  
13 last three days, Google has actually amended its misinformation  
14 policies. It really blended the vaccine misinformation and the  
15 medical misinformation policies to prohibit all kinds of speech  
16 on medical matters, including vaccines, abortion, cancer  
17 screenings, and the like.

18 So it's become clear to us in the last month that Google  
19 is, unlike Facebook and Twitter which have pulled back from the  
20 censorship of people on their platforms, Google was actually  
21 doing more censoring. And that will likely continue during  
22 Mr. Kennedy's presidential campaign.

23 And the damage that would be done to the political  
24 process, if that's allowed to continue, would be irreparable.

25 **THE COURT:** All right. Let me ask three very precise

1 questions. Then I'm going to turn to counsel on behalf of  
2 Google to see if some of these dates and information or  
3 questions I've asked can be resolved.

4 What authority does plaintiff have for the proposition  
5 that defendants may not rely on local health authorities  
6 informing their own medical misinformation policy?

7 Second question, and, again, going back to my earlier one:  
8 Under which tests for determining a state actor does plaintiff  
9 suggest is controlling and why?

10 And what irreparable harm will plaintiff suffer if the TRO  
11 is not granted since we're talking about a video that was  
12 uploaded prior to his announcement of his candidacy and then  
13 one with a podcast host and the other with a comedian?

14 Please respond.

15 **ATTORNEY STREET:** Well, with respect to the first  
16 question, Your Honor, there is no evidence on this record that  
17 Google has anybody making independent decisions about how to  
18 apply its misin-- at least its medical misinformation policies.  
19 The policies themselves depend entirely on government sources.

20 And so I guess in a hypothetical world, could they do  
21 that? Sure. But in this situation, the record we have before  
22 us, we have no record of independent decision-making. Instead  
23 we have a policy that was drafted in response to government  
24 demands for it and collaboration with government -- government  
25 sources, and a policy that looks on its face entirely to the

1 government to decide what is -- what is false, what is  
2 misleading, what is damaging. And that is exactly what I think  
3 the state action doctrine was designed to prevent.

4 And I actually want to go -- I want to mention a case that  
5 we cited in our reply brief, Your Honor, called *Brown v.*  
6 *Hartlage* which 41 years ago dealt with a similar situation.  
7 The government of Kentucky addressing alleged false  
8 information -- false and misleading information by a political  
9 candidate in an election. And the Supreme Court said it's not  
10 up to the government to decide what is true and what is false,  
11 what is misleading in a political campaign.

12 Obviously this situation is different because there's a  
13 private party involved, but you have a private party relying  
14 entirely on government sources. And so what that means is that  
15 triggers constitutional scrutiny. And that's what's  
16 significant here.

17 Now to the Court's -- to the Court's other two questions.  
18 I think -- again I think that in this case, at least on the  
19 record we have right now, the joint action and nexus tests are  
20 the most appropriate, but I would also say that we need to  
21 remember that in Supreme Court's view stated in the *Brentwood*  
22 case, what we're always looking for is whether seemingly  
23 private action is, quote, fairly attributable to the  
24 government.

25 And so regardless of whether we're using one test or



1 another applying aspects of different tests, I think that has  
2 been -- that has been satisfied here.

3 And the danger to the political process, not just to my  
4 client's presidential campaign, but the danger to the political  
5 process of allowing Google to even selectively remove speech on  
6 matters of public concern during a presidential campaign is  
7 significant and would grossly affect the campaign itself.

8 **THE COURT:** All right. Does YouTube, as a private  
9 company offering both free and paid services, have a right to  
10 decide what's published or not published on their website? Do  
11 they have that right?

12 **ATTORNEY STREET:** Well, if they were a publisher,  
13 Your Honor, they would have that right, but they're not a  
14 publisher. And we went through this several pages in our -- in  
15 our reply brief talking about the differences between  
16 technology companies, Internet companies of today, and  
17 publishers like the *New York Times* or private parties that are,  
18 you know, putting in a newsletter, in the *PG&E* case, in their  
19 billing statements.

20 And in fact, there's -- and the most fundamental reason  
21 that Google/YouTube is not a publisher is, unlike publishers,  
22 they take no responsibility for the content that's posted on  
23 their platform. And as a matter of law, they cannot be held  
24 liable for that.

25 So that's an important -- that's an important distinction,

1 Your Honor, and one that distinguishes this case from the *Miami*  
2 *Herald* case, *PG&E* case, and the *Hurley* cases that we discussed  
3 in our brief.

4 **THE COURT:** And, again, Mr. Kennedy did agree to  
5 YouTube's terms and services when creating his account. And  
6 this issue from your perspective is going beyond his particular  
7 account?

8 **ATTORNEY STREET:** This does go beyond his particular  
9 account. And I would also say, Your Honor, that an agreement  
10 cannot be used to circumvent the Constitution.

11 I think that would need to look at -- address each  
12 question in the appropriate constitutional framework, and here  
13 that weighs strongly in his favor.

14 **THE COURT:** And so he agreed to the user agreement  
15 which included misinformation language and other third parties  
16 that they were all on notice and they could either accept or  
17 decline that service. Would that be fair?

18 **ATTORNEY STREET:** I don't know if it's fair or not,  
19 but what I know is that it can't be -- whether you agree to  
20 boilerplate terms of service in a user agreement or not, I  
21 don't think that even a private party can use those policies to  
22 violate individuals' constitutional rights and to create a  
23 chilling effect on speech in the political process.

24 **THE COURT:** Thank you.

25 All right. Counsel, the same questions are posed to you.

1 I will probably have a couple of additional questions with  
2 regards to YouTube's user policy. And if you can recite the  
3 relevant portions. And could YouTube be found liable by  
4 private parties for not addressing information, therefore is  
5 there any coercive nature that can be imposed by anyone?

6 If you know how many people died of COVID-19 by the end of  
7 January 2021, and whether there's any dispute about the number  
8 of citizens that were impacted by COVID-19.

9 And how does YouTube make decisions on what videos  
10 violates its misinformation policies?

11 How are YouTube's misinformation policies enforced?

12 And if Mr. Kennedy plans on posting videos that violates  
13 the terms and services or policies, how would that be addressed  
14 in the future given the lifeline of COVID-19 as it stands now?

15 And if you need me to repeat any of the previous questions  
16 posed to counsel, let me know and I'll go back and recite those  
17 questions as well with regards to how many videos of  
18 Mr. Kennedy were taken down and if you happen to know the  
19 chronology of events.

20 **ATTORNEY BLAVIN:** Thank you, Your Honor.

21 I'll start with Your Honor's questions relating to the  
22 videos taken down and the timing with respect to them.

23 I think the record is unclear precisely when the video of  
24 the Saint Amselm speech was taken down. I don't have any  
25 reason to dispute that it was within a short period of time of

1 the speech given on March 3rd, but there's nothing in the  
2 record in this case at least in terms of the declarations that  
3 have been submitted which identify the specific date.

4 **THE COURT:** But it's definitely before he announced  
5 his campaign?

6 **ATTORNEY BLAVIN:** Yes, I know that's for sure. I  
7 think it was attempted to be reposted I believe on March 6th.  
8 It was at that point not permitted. So it was certainly within  
9 a very close time frame of when it was posted to the site.

10 As to the Seth Rogan -- I'm sorry, the video with the  
11 comedian Mr. Rogan, not Seth Rogan, not somebody else, and  
12 Mr. Kennedy, I believe the record demonstrates that -- and this  
13 is attached as an exhibit I believe to the A Kennedy  
14 declaration, the takedown communications with Mr. Kennedy, I  
15 believe it's identified as June 17th, 2023, in an e-mail from  
16 YouTube to the recipients: We've reviewed your content. We  
17 think it violates our medical misinformation policies and it's  
18 been removed.

19 So I think we have a June 17th date for that.

20 With respect to the Peterson video, as Your Honor noted,  
21 they don't identify the specific video at issue. So I just  
22 don't think it's clear from the record what that video was or  
23 when it was removed.

24 **THE COURT:** Thank you.

25 **ATTORNEY BLAVIN:** Unless Your Honor has any more

1 questions about those specific issues, I'm happy to go to  
2 Your Honor's questions relating to the applicable test and how  
3 it applies here in the Ninth Circuit decision in *O'Handley*.

4 **THE COURT:** All right. And with regards to the  
5 comedian Joe Rogan's video, you believe that that may be a  
6 family member of the Kennedy family, or at least the same last  
7 name, sharing the same last name as Mr. Kennedy?

8 **ATTORNEY BLAVIN:** Are you referencing, Your Honor --

9 **THE COURT:** The June 17th, 2023.

10 **ATTORNEY BLAVIN:** Oh, yes, I believe that was sent  
11 to -- it's redacted, I believe the "To" line, but from my  
12 understanding of the declaration it was sent to Mr. Kennedy's  
13 relative.

14 **THE COURT:** Thank you.

15 And then if you'll proceed under which test for  
16 determining a state actor, do you believe, is controlling and  
17 why?

18 **ATTORNEY BLAVIN:** So the Ninth Circuit's decision in  
19 *O'Handley*, as Your Honor correctly identified, is controlling  
20 here.

21 Plaintiffs, in their motion papers, didn't identify  
22 specifically which test would apply. As we indicated in our  
23 opposition, we think if there's going to be any test which  
24 would apply, it would be either the nexus test or the joint  
25 action test.

1           Plaintiff's counsel today said that they are in fact in  
2           agreement on that, that those would be the two applicable  
3           tests. And those tests are very demanding as the Ninth Circuit  
4           made absolutely clear in *O'Handley*.

5           With respect to the nexus test, just to flesh it out,  
6           Your Honor, the Ninth Circuit said, as Your Honor indicated,  
7           there's two subparts to that test which could apply, the first  
8           one being the State cannot, quote, threaten adverse action to  
9           coerce a private party into performing a particular act.

10          And just to pause on that for a second, because I think  
11          counsel conceded today that there's absolutely no evidence at  
12          all that the federal government coerced Google in this instance  
13          to either adopt a medical misinformation policy, much less to  
14          apply that policy specifically to Mr. Kennedy's content.

15          In fact, there's absolutely nothing in the record  
16          regarding any communications or even knowledge of the federal  
17          government with respect to Mr. Kennedy's particular posts that  
18          are at issue in this case or a request to take them down.

19          And that's very different from *O'Handley* where you had the  
20          plaintiff's specific content, a request from the government to  
21          remove that content, and the Ninth Circuit nonetheless said  
22          that that did not constitute a state action under the nexus  
23          test.

24          The second element of the nexus test is whether the state  
25          uses positive incentives such that they, quote, overwhelm the

1 private party and essentially compel the party to act in a  
2 certain way.

3 And just to pause on that, Your Honor, I don't think  
4 there's anything in the record indicating any positive  
5 incentives from the state to Google, much less one that would  
6 essentially compel Google to act in a particular way.

7 With respect to the joint action test, the Ninth Circuit  
8 said that the party -- the government, that is, has to so far  
9 insinuate itself into a position of interdependence with the  
10 private party that it must be recognized as a joint participant  
11 in the challenged activity or significantly involve itself in  
12 the private party's actions and decision-making in a complex  
13 and deeply intertwined process.

14 And, again, in the Ninth Circuit decision in *O'Handley*,  
15 based on the allegations of the complaint, the court found that  
16 neither of those tests were satisfied.

17 And just to quickly summarize what those allegations were,  
18 because I think they demonstrate, if anything, substantially  
19 more government involvement than what we have in this case.  
20 There Twitter allegedly established an expedited review process  
21 for posts that were specifically flagged by state officials.  
22 It removed 98 percent of the 300 posts that were flagged by the  
23 state, including one specifically involving the plaintiff's  
24 content. And third, Twitter allegedly worked -- or the  
25 government worked in partnership with social media companies to

1 develop more efficient reporting procedures for potential  
2 misinformation.

3         Nonetheless the Ninth Circuit held that Twitter exercised  
4 its own independent judgment in adopting its policies and  
5 enforcing them, and the mere fact that you have information  
6 sharing in cooperation between the government and the private  
7 party does not establish state action.

8         And the Ninth Circuit specifically noted, because I know  
9 plaintiffs have indicated this during today's argument,  
10 plaintiff's counsel and also in their reply brief, that, well,  
11 if there's a shared mission or objective between the private  
12 party and the government, that could somehow satisfy the joint  
13 action test.

14         Actually the Ninth Circuit specifically rejected that in  
15 *O'Handley*. The Ninth Circuit said that, quote, private and  
16 state actors were generally aligned in a mission to limit the  
17 spread of misleading election information...does not transform  
18 private conduct into state action.

19         Moreover, Your Honor, courts in this district, both before  
20 and after *O'Handley*, have rejected near identical claims.

21         And I want to direct Your Honor's attention to the *Hart v.*  
22 *Facebook* decisions from Judge Breyer which plaintiff's counsel  
23 did not address during today's argument or in their reply  
24 brief.

25         There, similar to here, there was a motion to dismiss



1 which was granted by Judge Breyer. Then the plaintiffs took  
2 all of the discovery they could find from the *Missouri v. Biden*  
3 proceeding and filed a motion for leave to amend their  
4 complaint, and said, look, we have enough now based upon this  
5 discovery to state a claim and to establish state action under  
6 either of *O'Handley's* test.

7 And Judge Breyer considered all of that evidence,  
8 including Carol Crawford's CDC deposition testimony, which has  
9 been submitted to Your Honor. We provided the entire  
10 transcript including e-mails from Mr. Flaherty of the  
11 White House to Facebook and Twitter. And if anything, and  
12 Your Honor can see this in the declaration I submitted, those  
13 communications were even more aggressive from the state than  
14 anything that we have here.

15 And nonetheless Judge Breyer said under *O'Handley*, even  
16 taking all of this evidence into account from the *Missouri v.*  
17 *Biden* proceeding, that it does not satisfy the *O'Handley* test.  
18 And I think that's exactly right, Your Honor, and I think that  
19 analysis squarely applies here.

20 Other decisions such as the *Federal Agency of News* case we  
21 cite from Judge Koh involving Facebook, she held that the mere  
22 fact that there was allegedly a partnership between government  
23 and law enforcement agencies and Facebook to deal with Russian  
24 misinformation on the platform did not satisfy either of these  
25 state actions.

1           So there's a host of authority on this which plaintiff's  
2 counsel has not addressed.

3           And I'll pause there to see if Your Honor has any  
4 questions on the test. But I would like to go through the  
5 specific evidence that plaintiff's counsel has put forward  
6 because they make assertions regarding that evidence, but the  
7 actual evidence itself does not bear out what they're saying.

8           **THE COURT:** All right. That would be helpful since  
9 the plaintiff is indicating they will suffer irreparable harm  
10 if this TRO is not granted and it will have a chilling effect  
11 on speech.

12           **ATTORNEY BLAVIN:** Yes, Your Honor.

13           So if you look at the actual documents and materials that  
14 plaintiff's counsel has put forward to establish state action  
15 here, they formed the three buckets: One, 2021 meetings with  
16 the Surgeon General's office. Second, an April 22nd, 2021,  
17 e-mail from Rob Flaherty of the White House to Google. And  
18 three, meetings between the CDC and major online platforms in  
19 2021, at which vaccine misinformation was occasionally  
20 addressed.

21           Now if you actually look at the record here, two things  
22 are absolutely clear. First, none of these communications  
23 offer any evidence of coercion which I think plaintiff has  
24 conceded now, nor do they establish any sort of overwhelming  
25 positive incentives to establish the nexus test.

1 But, two, with respect to the joint action test, what  
2 these documents show and testimony shows is that Google was  
3 already and independently crafting and developing its own  
4 policies at the time it was talking with the government.  
5 There's no evidence at all to state that Google somehow only  
6 did this as a result of its discussions with the government.

7 So, for example, if you look at the communications with  
8 the office of the Surgeon General, Eric Waldo testified in his  
9 deposition that the government perceived Google to have  
10 independently decided to limit vaccine-related misinformation  
11 without any prompting by the government.

12 He describes his meetings with Google as saying what  
13 Google was already doing to address these issues, and that's at  
14 pages 119 through 121 of his deposition, which is attached as  
15 Street Declaration Exhibit H, and he says the same thing at  
16 page 129.

17 With respect to the White House communications, the  
18 communications from Rob Flaherty, this is again the April 22nd,  
19 2021 e-mail, Flaherty, in that e-mail, never directs Google to  
20 take any particular action with respect to a medical  
21 misinformation policy, whether with a carrot or a stick. Just  
22 the opposite, Flaherty acknowledges, and this is quoting from  
23 his e-mail, that, quote, removing content that is unfavorable  
24 to the cause of increasing vaccine adoption is not a realistic  
25 or even a good solution.

1           So basically he's saying we're not saying to do this,  
2 we're not even recommending to do that, it may not be the right  
3 thing. And that's exactly what he's accusing Google of doing  
4 in this case.

5           With respect to the communications as to the CDC, we  
6 provided Your Honor with a complete copy of Carol Crawford's  
7 deposition testimony, and again this is the testimony that  
8 Judge Breyer also considered in the *Hart v. Facebook* case.

9           And in that deposition testimony, which Mr. Kennedy only  
10 provides excerpts for, we provided Your Honor with the entire  
11 transcript, at pages -- page 105 of the deposition to 106, she  
12 states in that deposition that no one at the CDC had crafted  
13 the content policy of any social media company or even gave  
14 input on what such a policy should look like.

15           So I think, Your Honor, collectively when you look at all  
16 of this evidence, it doesn't even establish, you know, what  
17 plaintiff's counsel has stated here today that somehow Google  
18 just adopted this policy in response to the communications with  
19 the government.

20           If anything, it shows that Google was independently  
21 exercising its own judgment that these were important policies  
22 to adopt, the government shared that objective, and that's  
23 exactly what the Ninth Circuit in *O'Handley* rejected as  
24 sufficient to satisfy the joint action test.

25           Now, if I could respond to an additional argument which

1 plaintiff's counsel made today regarding the fact that, well,  
2 the fact that Google and YouTube made reference government  
3 policies, you know, with respect to vaccine -- you know,  
4 information, with respect to COVID-19, et cetera, that that  
5 somehow would convert Google into a state actor.

6 And of course relying on the expertise of particular  
7 agencies and individuals if they're in the government or  
8 outside the government would not be sufficient to satisfy  
9 either of *O'Handley's* joint -- either of *O'Handley's* state  
10 action tests.

11 And I think in *O'Handley* itself, again, you had the  
12 government that was specifically flagging for Twitter a post  
13 that it thought constituted election misinformation. And  
14 Twitter was relying upon that expertise in terms of looking at  
15 those posts itself and making its own independent judgment. So  
16 that can't be enough.

17 But beyond that, if you actually look at Exhibit D to the  
18 Street declaration, and this is I believe the vaccine  
19 misinformation policy, it specifically says that Google looks  
20 to WHO and -- the World Health Organization, WHO, and local  
21 health agencies in terms of identifying, you know, proper  
22 information related to these policies.

23 So it's not even the federal government that Google was  
24 looking to, and that's a big disconnect in that argument. It's  
25 looking to other regulatory agencies.

1           And then finally, Your Honor, on this point, you know,  
2           even if, you know, there was allegedly some sort of government  
3           pressure, which I think plaintiff's has counsel conceded there  
4           wasn't even, the fact is he doesn't identify -- the plaintiff  
5           doesn't identify any particular state action as to his content.

6           And the Supreme Court in the *Blum v. Yaretsky* case made  
7           clear that the government must compel, quote, the specific  
8           conduct of which the plaintiff complains.

9           And both in the *Hart* decision from Judge Breyer, his first  
10          decision, and in the *Federal Agency of News* case from  
11          Judge Koh, they both independently dismiss the claims at issue  
12          because even though there may have been generalized discussions  
13          relating to Russian misinformation, or in *Hart*, again, medical  
14          misinformation between the government and the private party,  
15          there was nothing to show that there was a specific  
16          communication or pressure relating to any particular piece of  
17          content of the plaintiff.

18          And I think as Your Honor correctly identified here, all  
19          that they have with respect to Mr. Kennedy's own content is an  
20          e-mail that a White House official sent more than two years ago  
21          to a different company, Twitter.

22          And even if there was that type of evidence here, under  
23          *O'Handley* it makes clear that even if the government tells you,  
24          hey, we think this information should be removed, and then the  
25          company exercises its own independent judgment and decides to

1 remove that, that cannot satisfy the state action doctrine.

2 And then finally on these legal issues, Your Honor, we've  
3 heard frequently today that Mr. Kennedy is a political  
4 candidate during the 2024 presidential election and that that  
5 somehow should change the analysis. But it doesn't. The fact  
6 that you're running for office doesn't excuse you from  
7 satisfying the demanding requirements of the state action  
8 doctrine. And there's nothing, there's no authority at all  
9 that somehow a looser standard were to apply when you have a  
10 political candidate at issue.

11 **THE COURT:** And just for clarity and closure, please  
12 address the plaintiff's position on standing. And then also  
13 the, just for clarity, because I know you've woven it into your  
14 argument, how YouTube's misinformation policies are enforced  
15 and how does YouTube make decisions on what videos violate its  
16 medical misinformation policies?

17 **ATTORNEY BLAVIN:** Yes, Your Honor. I'm sorry. Could  
18 you repeat that first question again? I just want to make sure  
19 I have that right.

20 **THE COURT:** The first one was standing.

21 **ATTORNEY BLAVIN:** Yes.

22 **THE COURT:** Address plaintiff's argument on standing.  
23 And then the next is how are YouTube's misinformation policies  
24 enforced and how does YouTube make decisions on what videos  
25 violates its medical information policies.

1           On standing, we're looking at causation and  
2           redressability.

3           **ATTORNEY BLAVIN:** Yes. So with respect to the  
4           standing arguments, I think -- and these were, I think,  
5           interjected a little bit in the reply brief. There were  
6           various cases citing with respect to, you know, you can have  
7           standing if there's a general chilling effect, et cetera,  
8           et cetera.

9           All of those cases, Your Honor, address the particular  
10          issue of where the government is taking direct action on the  
11          plaintiff. And I think the briefs were speaking a little bit  
12          past each other because Google has not made a standing argument  
13          here with respect to this content. So there's no state action  
14          to begin with. So there's nothing to analyze under the First  
15          Amendment in terms of whether or not there's standing.

16          In the *Brown* case, which plaintiff's counsel referenced,  
17          again that involved a state actor taking action with respect to  
18          a particular political candidate's content, not a private  
19          party.

20          So the mere fact that Mr. Kennedy feels that he's  
21          suffering a chilling effect on future content or that other  
22          third parties may feel that they don't want to upload his  
23          content, none of that is relevant for purposes of First  
24          Amendment standing because there's no state action to begin  
25          with. And that really ends the inquiry. There's not a



1 question of standing. There's just a question of state action.  
2 And without a state action, there's no potential violation of  
3 Mr. Kennedy's First Amendment rights.

4 With respect to the application and development of  
5 YouTube's own policies and their applications to Mr. Kennedy, I  
6 want to pause here because I think Your Honor raised this  
7 question in the context of your discussion with plaintiff's  
8 counsel on Google's own rights here. And I think that's  
9 important to emphasize.

10 Google has its own First Amendment rights in terms of  
11 deciding what content is appropriate to appear on its platform  
12 or not. So plaintiff's counsel actually have it backwards. If  
13 the Court were to issue an injunction here, that wouldn't  
14 preserve plaintiff's rights. It would actually violate  
15 Google's First Amendment rights. And that's exactly what  
16 Judge Breyer held in the District Court in the *O'Handley*  
17 decision.

18 He made clear that:

19 An online platform, quote, has important First  
20 Amendment rights that would be jeopardized by a court  
21 order telling it what content moderation policies to adopt  
22 and how to enforce those policies. The Court will issue  
23 no such order.

24 And Judge Breyer's decision, as he noted, was consistent  
25 with Supreme Court and Ninth Circuit precedent. The Supreme

1 Court going back to the *Miami Herald v. Tornillo* case made  
2 absolutely clear. And again this case, just to be clear, it  
3 involved political candidates. The issue was whether or not  
4 the government could force a newspaper to carry the content of  
5 a political candidate to respond. And the Supreme Court said  
6 no, the treatment of public issues and public officials,  
7 whether fair or unfair, constitute the exercise of editorial  
8 control and judgment which is protected by the First Amendment.

9 The Eleventh Circuit, in the *NetChoice* case, this was  
10 versus the Attorney General of Florida, similarly held that  
11 online platforms have this First Amendment right. The Eleventh  
12 Circuit specifically said, quote, when a platform selectively  
13 removes what it perceives to be incendiary political rhetoric,  
14 pornographic content, or public health misinformation, it  
15 conveys a message and thereby engages in speech within the  
16 meaning of the First Amendment.

17 And the statute there also dealt with political candidate  
18 speech. The Florida statute limited the ability of platforms  
19 to remove content of political candidates. The Eleventh  
20 Circuit confirmed the District Court's decision that that would  
21 violate the platform's First Amendment rights.

22 So if anything, the injunction here that's being proposed  
23 would violate Google's First Amendment rights, not plaintiff's  
24 First Amendment rights, which demonstrates that the irreparable  
25 harm would be suffered by Google and the balance of equities

1 sharply tip in Google's favor.

2 With respect to the policies themselves and their  
3 enforcement, I think the record is clear here that the policies  
4 were developed independently by Google, just looking at the  
5 communications with the government, and Google exercised its  
6 own independent judgment of what those policies would be, as we  
7 went over the evidence before.

8 And as to the application of those policies, it's not in  
9 the record, Your Honor, specifically how those policies are  
10 applied, but I think if you look at the communications such as  
11 Exhibit D to the A. Kennedy declaration, it says, "Our team has  
12 reviewed your content, and unfortunately we think it violates  
13 our medical misinformation policy."

14 So there's a team at Google that uses their own  
15 independent judgment in reviewing content and determining  
16 whether it violates the policies and to remove that content if  
17 it does.

18 And, again, that's Google's First Amendment right to do  
19 that, as Judge Breyer held, as the Eleventh Circuit held, and  
20 several other decisions have held as well, referenced in our  
21 papers.

22 I can address Your Honor's additional questions, and I  
23 apologize if I miss anything. So please interject at any point  
24 in time.

25 I think you asked with respect to the harm that COVID had

1     been causing during the pandemic, you know, how many people may  
2     have died back in 2021 as a result of COVID when these policies  
3     were being adopted and how many people, you know, have died at  
4     this point.

5             I know at least the latter, I think it's very well  
6     publicly settled though I'm not sure if it's in the docket,  
7     although we did noted this in our brief. At this point over a  
8     million people have died in the United States from COVID-19  
9     back in 2021.

10            I don't have the specific figures, Your Honor, and I'm  
11     happy to supplement the record if that would be helpful. But I  
12     think we knew that, you know, at that point close to half a  
13     million back in 2021 may have passed away from COVID.

14            And again this isn't in the record, and I'm just relying  
15     upon my colleague, Ms. Yee, looking for some of this  
16     information from public sources. We're happy to supplement.

17            But I think what this will demonstrate is that this was a  
18     serious public health emergency. I think it remains a serious  
19     public health issue. There's discussion all the time of new  
20     variants coming up or even happening in San Francisco right  
21     now, a mini-surge of COVID. So these are incredibly important  
22     issues that remain important public health issues.

23            And if you look at, you know, the question of would an  
24     injunction be in the public interest, I think the answer is  
25     absolutely not. Besides the fact that such an injunction would

1 violate Google's First Amendment rights so it would causes  
2 irreparable harm to Google, and if the First Amendment  
3 demonstrates what's in the public interest, an injunction would  
4 do exactly the opposite. But forcing Google to carry medical  
5 vaccine misinformation on YouTube is absolutely against the  
6 public interest.

7 As the Surgeon General letter that is attached to the  
8 Street declaration, Exhibit K, states, "The proliferation of  
9 health misinformation during the pandemic has been both  
10 extensive and dangerous and poses a growing threat to the  
11 nation's health."

12 The Ninth Circuit in the *Doe v. San Diego Unified School*  
13 *District* case, which we cited in our papers with respect to the  
14 public interest, that involved the question of an injunction to  
15 enjoin the San Diego School District's vaccine mandate. And  
16 what the Ninth Circuit said is the public interest weighs  
17 strongly in favor of denying the injunction.

18 And the court noted that the record indicates that  
19 vaccines are safe and effective at preventing the spread of  
20 COVID-19 and that a mandate is therefore likely to promote the  
21 health and safety of school students and staff as well as the  
22 broader community.

23 So if anything, the Surgeon General itself has recognized  
24 forcing Google to carry this type of medical misinformation,  
25 vaccine-related misinformation would be directly contrary to

1 the public interest in this matter.

2 **THE COURT:** All right. Thank you.

3 Now then, plaintiff, based on the fact that the defendants  
4 indicate that they did not rely on local health authorities  
5 informing their medical information policy but were guided by  
6 the expertise of those in the community, regulatory agencies,  
7 and local health authorities, your response?

8 **ATTORNEY STREET:** Well, that's still -- those are  
9 still government actors, Your Honor. And I think that it's  
10 what's helpful from the record, that entry record that was  
11 developed in the *Missouri v. Biden* case is that the evidence of  
12 communications between these technology companies like Google,  
13 Facebook, and Twitter, and government authorities while writing  
14 these policies shows that there is something more than --  
15 there's something more than Google having, say, a team of  
16 doctors who are writing a policy.

17 **THE COURT:** Do you have information to support that  
18 assertion?

19 **ATTORNEY STREET:** I'm sorry?

20 **THE COURT:** Do you have information to support that  
21 assertion that it's beyond their independent evaluation?

22 **ATTORNEY STREET:** Well, there's no evidence in the  
23 record that there's been an independent evaluation. And I  
24 think -- and this is my point as to the evidence that was  
25 developed in *Missouri v. Biden*.

1           In the previous cases that Google's counsel cited that  
2           were decided in this district, those cases were dismissed  
3           because the judges in those cases decided that, well, it's  
4           implausible to believe that Google or Facebook or Twitter are  
5           working with the government or communicating with the  
6           government and writing these policies.

7           And the relevance of the record, the evidence that was  
8           gathered in *Missouri v. Biden* case is that in fact that is what  
9           was happening.

10          Now this case may -- you know, we're still at an early  
11          stage, and so I don't think that is the only issue that matters  
12          here. In fact, I think what's far more important in this case,  
13          Your Honor, is the content of the policies, the misinformation  
14          policies themselves. They prohibit speech that contradict  
15          government sources. They change -- by their terms, they change  
16          not when Google changes its mind, but when the government  
17          changes its mind about these subjects.

18          And I'm glad that my colleague mentioned, you know, the  
19          interest in -- Google's interest in promoting public -- you  
20          know, what it calls public health, which is fine. But  
21          promoting public health, that's something that the government  
22          does, and that's an inherently governmental action.

23          And if you're a publisher, say, you're the *New York Times*  
24          or whoever else, and you want to write articles, write  
25          editorials as a publisher that also promote public health, that

1 say, you know, the government is right, we think this is  
2 important, we think people like Kennedy are quacks and aren't  
3 to be listened to, aren't to be trusted, that's fine. But a  
4 publisher takes responsibility for what it publishes. Under  
5 the law, it has an obligation to do that.

6 Google does not. Google disclaims responsibility for  
7 anything. It is not -- it is not a publisher. And so I think  
8 as to the balance of harms, there is no harm to Google in  
9 issuing this injunction. Which I would note, Your Honor, we've  
10 actually narrowed substantially to only apply to speech from my  
11 client, Mr. Kennedy, on issues related to his presidential  
12 campaign.

13 And that's important because what's happening here is when  
14 Google takes down a speech or a video content of Mr. Kennedy  
15 speaking, it's not just removing what it claims to be or what  
16 the government claims to be misinformation about medical  
17 information, it's also removing political speech. That's the  
18 importance of that speech in New Hampshire that was taken down  
19 back in March.

20 I was at that speech. At least half of it had nothing to  
21 do with medical information whatsoever. It was Mr. Kennedy,  
22 you know, talking about his environmental record, his  
23 childhood.

24 So that's -- that's the issue here. When you're removing  
25 political speech, there is a chilling effect, and that does



1 damage the political process.

2           **THE COURT:** So that brings me to a question. Are you  
3 indicating that the only objectionable portion was any  
4 reference to the vaccines, that he didn't say anything else in  
5 any of these speeches that may violate other policies, just the  
6 medical policy standing alone, just the medical policy?

7           **ATTORNEY STREET:** That is the only policy that  
8 YouTube -- and if you look at the exhibit to my declaration  
9 that attached a news article with YouTube's explanation, that's  
10 the policy that they --

11           **THE COURT:** No. My question to you is, is it your  
12 position there's nothing else in those speeches that could be  
13 found as objectionable or violating any service agreement?

14           **ATTORNEY STREET:** Well, correct, because I don't  
15 think -- I don't think the discussion of Mr. Kennedy's  
16 environmental record, like say with the Hudson River CAPERS,  
17 is -- I wouldn't even claim -- I don't think they would even  
18 claim that that's -- that that's misinformation.

19           **THE COURT:** Well, the March one is not as relevant as  
20 the April -- anything post-April since that is kind of the  
21 linchpin of where you begin in your arguments. And so I'm just  
22 trying to have some clarity about what encompasses this TRO and  
23 what does not.

24           **ATTORNEY STREET:** Well, I'd say what encompasses this  
25 TRO, Your Honor, is that -- and I think we spelled this out in

1 the order -- it's just that we're asking for the Court to order  
2 Google to not remove speech of Mr. Kennedy's on matters of  
3 public concern during his campaign.

4 Now if he ceases to be a presidential candidate, then  
5 maybe that's a different situation. But I think that given --  
6 given the importance of my client's criticism of the government  
7 on certain issues, including public health policy, it's  
8 impossible to carve one out. It's impossible to say, well, you  
9 know, this certain information violates our policies, we'll  
10 take this down.

11 And I think that's actually why we've seen, Your Honor,  
12 that Google is not removing all of the content that's posted  
13 regarding Mr. Kennedy. It just happens to be certain -- you  
14 know, certain -- certain content.

15 But that doesn't -- that doesn't change the analysis  
16 because it still creates the chilling effect. And some of the  
17 videos they have taken down again have been some of the most  
18 widely viewed videos, including the New Hampshire speech, the  
19 Rogan interview, and the Peterson interview. Which I checked  
20 my notes and I don't -- I don't have the date. I know that it  
21 was in either June or July, but I apologize, I don't have the  
22 specific date.

23 **THE COURT:** All right. Thank you.

24 Anything further?

25 **ATTORNEY BLAVIN:** Yeah, Your Honor. If you wouldn't

1 mind, I'll briefly go through just a last set of points here.

2 First with respect to the issue of whether only a portion  
3 of the speech was removed and other parts of the speech may not  
4 have been offending Google's policies, it's not Google's  
5 obligation to edit the video. If the video violates its  
6 medical misinformation policies, its vaccine-related  
7 misinformation policies, it can remove that video.

8 Now if plaintiffs want to or anyone else wants to edit the  
9 video to take out the part of the video that's violating its  
10 policies, of course they are free to do so.

11 And, again, as Your Honor recognized, Mr. Kennedy, as he  
12 acknowledges, has his videos up on Twitter, or X as it's now  
13 called, has his videos up on Facebook. There's several other  
14 videos of him up on YouTube. He just acknowledge, yeah, if the  
15 videos don't violate those policies, generally they stayed up.  
16 So that's just a fact that I wanted to make sure that was clear  
17 in the record.

18 With respect to the reliance on government experts, I mean  
19 it can't be the fact that you rely on a government agency for  
20 their expertise would automatically convert you into a state  
21 actor when you're exercising your own independent judgment in  
22 adopting a policy and enforcing it. And plaintiff cites no  
23 authority to support that.

24 And more so, as noted before, the specific government  
25 agencies that are referenced in the policies are not even the

1 federal government. It's WHO and local health authorities. So  
2 there's a disconnect there.

3 With regards to plaintiff's counsel's argument that, well,  
4 none of these other courts that have dismissed these cases,  
5 again on the pleadings without any discovery whatsoever,  
6 considered *Missouri v. Biden*.

7 Well, as I noted, Your Honor, that's just wrong.  
8 Judge Breyer considered substantial evidence from *Missouri v.*  
9 *Biden* including a significant amount of evidence that's in  
10 front of your court and held that there was no state action  
11 whatsoever.

12 And then briefly, Your Honor, with respect to, you know,  
13 the alleged harm Mr. Kennedy would suffer from these handful of  
14 videos being removed, Google also has, besides its First  
15 Amendment rights, as we noted in our papers, Google has a  
16 strong interest in its own content moderation policies  
17 maintaining users' trusts and expectations in the platforms.

18 We've submitted to Your Honor several of those policies,  
19 and they emphasized that the safety of our creators, viewers,  
20 and partners is our highest priority.

21 So an injunction that would force Google to carry this  
22 content would not only violate the First Amendment, but it  
23 would harm its own efforts to make sure that it has a safe  
24 platform in which potentially dangerous medical and vaccine  
25 misinformation does not exist on it.

1           And then briefly, Your Honor, just on the issue of, you  
2           know, plaintiffs have suggested that, you know, there could be  
3           more out there that they just don't have.

4           Again, Your Honor, all of these cases have been dismissed  
5           on the pleadings, including the *O'Handley* case which had  
6           significant evidence in it, the *Hart* case, *Federal Agency of*  
7           *News* case.

8           Courts do not allow discovery to determine if you have a  
9           claim. And plaintiff here has already had access to  
10          substantial discovery from the *Missouri v. Biden* case,  
11          including communications between government officials and  
12          Google employees, deposition transcripts, government discovery  
13          responses. All that would happen with enabling any discovery  
14          where there's absolutely no basis to issue a TRO would be a  
15          fishing expedition from Google to see if the plaintiff has a  
16          claim.

17          And Google's motion to dismiss is due on August 30th. We  
18          plan to file that motion on or before that date. And we think  
19          Your Honor should rule on that motion which we think is clear  
20          based upon the record submitted here and the allegations of the  
21          complaint that the complaint here is facially deficient, does  
22          not come close to stating a claim. We believe the Court should  
23          dismiss that complaint on its face without permitting any  
24          potential discovery from Google in the interim.

25                 **THE COURT:** Anything further?

1           **ATTORNEY STREET:** The only thing I would add,  
2           Your Honor, is that the Supreme Court and the Ninth Circuit,  
3           indeed all federal courts in this country, have a very proud  
4           history of protecting dissenting viewpoints, protecting  
5           government dissent, especially in the political process, and  
6           that's what this case comes down to.

7           Now, obviously we're dealing with it in a modern context  
8           of you have huge companies that control what the Supreme Court  
9           has called the, you know, modern public square, and that's a  
10          new development.

11          But I would urge the Court to read the court's -- Supreme  
12          Court's state action cases very, very closely. And I'd also  
13          ask the Court to think about the Ninth Circuit's reasoning in  
14          the *O'Handley* case. And in the context of the Supreme Court's  
15          admonition, what we're really looking at is whether seemingly  
16          private behavior is fairly attributable to the state.

17          And I think that the Ninth Circuit -- if the Ninth Circuit  
18          had believed these cases never had merit, can't possibly be  
19          brought, they would have said so. It actually said to the  
20          contrary, that there is a situation we can envision in which  
21          private action could be deemed state action, and I think this  
22          is that case.

23          And I think that the importance of protecting the  
24          political process while minimizing any harm to Google who is  
25          not a publisher, cannot be held liable for what my client says

1 on YouTube, weighs in favor of granting the relief.

2 **THE COURT:** All right. Thank you.

3 And I'm glad that you brought the Court back to *O'Handley*,  
4 and I'm going to recite for the record the items that I'm going  
5 to take under submission and based on what I've heard whether  
6 the evidence and arguments fall short of state action.

7 And then taking a look at the guidelines in *O'Handley*,  
8 whether a private entity's conduct amounts to state action,  
9 namely, was the alleged constitutional violation caused by an  
10 exercise of some right or privilege created by the state or by  
11 a rule of conduct imposed by the state or by a person for whom  
12 the state is responsible.

13 When I look at nexus test one, whether there is pervasive  
14 entwinement of public institutions and public officials in the  
15 private actor's composition and workings, that's the first  
16 question that I would be looking at when I analyze this issue  
17 in reflection based upon all of the arguments of counsel.

18 Number two seems to have been conceded with regards to the  
19 nexus test, whether government officials have exercised  
20 coercive power or provided such significant encouragement,  
21 either overt or covert, that the choice must in law be deemed  
22 to be that of the state; whether the government officials  
23 threaten adverse action to coerce the private party into  
24 performing a particular act or encouraged by using positive  
25 incentives that overwhelm the private party and essentially

1     compel them to act. Counsel has conceded that that does not  
2     apply.

3             The joint action test, a plaintiff can show joint action  
4     either by proving the existence of a conspiracy or by showing  
5     that the private party was a willful participant in joint  
6     action with the state or its agents.

7             Counsel is arguing that relying upon WHO and local  
8     authorities and regulatory agencies and any public health  
9     officials, that that somehow entwines and becomes a joint  
10    action.

11            With regards to the remaining issues, the Court finds that  
12    there's nothing to show that there's any coercion or  
13    retaliation, and the evidence falls short of dates and nexus to  
14    the actions that were taken by Google.

15            So I'm going to be focused on two questions in reflection.  
16    It does not appear that, based upon what I've heard thus far,  
17    would warrant discovery at this stage.

18            We do have a further case management conference scheduled  
19    for September 12th, 2024. And I can give you anticipated dates  
20    that you may be assigned based on my calendar so that you can  
21    begin your planning. And when you have your joint conference  
22    with regards to your case management conference, you can at  
23    least determine whether these dates are suitable to your  
24    calendar.

25            The first available trial date is March 17th, 2025. So I



1 want you to know that. Final pretrial conference would thereby  
2 take place on February 13th, 2025. And joint pretrial  
3 statements would be due January 30th, 2025.

4 Now then we are going to reserve the date of November 7,  
5 2023, at 2:00 p.m., that's an in-person hearing for motion for  
6 preliminary injunction and motion to dismiss.

7 I believe the briefing schedule has already been uploaded  
8 for you. We will provide you with additional dates such as  
9 close of discovery. Fact discovery would be August 30th, 2024.  
10 Expert disclosure September 30th, 2024. Rebuttal expert  
11 disclosure October 21st, 2024. And close of expert discovery  
12 November 11th, '24. Last day to file dispositive motions would  
13 be December 10th, '24.

14 This is a tentative schedule. And the Court will place  
15 the tentative schedule on ECF so that you can review it. It  
16 will be a standalone document that will indicate tentative  
17 trial schedule.

18 Of course, these dates will fall off if the Court denies  
19 the motion for preliminary injunction and/or the TRO. And also  
20 if the Court grants the motion to dismiss, any later dates that  
21 come after November 7th would fall off the Court's calendar.

22 All right. So we will post the tentative schedule so that  
23 when you meet and confer, you will have the dates that are  
24 convenient to the Court's calendar.

25 Thank you both for being so amazingly prepared and making

1 it through some inclement weather. And it was a pleasure  
2 meeting each of you. Thank you.

3 **ATTORNEY STREET:** Thank you, Your Honor.

4 **ATTORNEY BLAVIN:** Thank you, Your Honor.

5 **THE COURT:** This matter is concluded.

6 (Proceedings adjourned at 11:13 a.m.)

7 ---oOo---

CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript  
from the record of proceedings in the above-entitled matter.

DATE: Thursday, August 24, 2023

A handwritten signature in black ink, reading "Kelly Shainline", is written over a horizontal line.

Kelly Shainline, CSR No. 13476, RPR, CRR  
U.S. Court Reporter

# EXHIBIT I

**From:** [Scott James Street](#)  
**To:** [Blavin, Jonathan](#); [John Howard](#)  
**Cc:** [Yee, Juliana](#); [White, Helen](#); [Scott, Carson J.](#)  
**Subject:** RE: Kennedy, Jr. v. Google  
**Date:** Friday, September 8, 2023 2:22:07 PM

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Jonathan,

For some reason this message did not get to my main inbox. Combine that with my travel over the past 10 days and I missed it until now.

In any event, yes, we would agree to stipulate that the judge's denial of the TRO was tantamount to the denial of a preliminary injunction. Please send me the stipulation you propose. That would allow us to move forward on those issues in just one court.

Also, since the pace of the campaign continues to pick up, we plan to file an emergency motion for an injunction pending appeal in the Ninth Circuit under Circuit Rule 27-1. Please let me know if your clients will oppose that, as I assume they will. We intend to file that motion by Monday, if not sooner. That motion will ask the Ninth Circuit to set an expedited briefing schedule and hold oral argument on October 4 in Pasadena, when it will hear argument in a case that raises similar issues (and in which we are also co-counsel).

We can also discuss scheduling issues after we get the stipulation filed.

Best,

Scott

---

**From:** Blavin, Jonathan <Jonathan.Blavin@mto.com>  
**Sent:** Thursday, August 31, 2023 2:18 PM  
**To:** Scott James Street <sstreet@jwhowardattorneys.com>; John Howard <johnh@jwhowardattorneys.com>  
**Cc:** Yee, Juliana <Juliana.Yee@mto.com>; White, Helen <Helen.White@mto.com>; Scott, Carson J. <Carson.Scott@mto.com>  
**Subject:** Kennedy, Jr. v. Google

(Sending again with fixed email addresses)

Counsel,

We have received the notice of your appeal of the TRO denial to the Ninth Circuit. As you may be aware, such orders are ordinarily not appealable unless they are "tantamount to the denial of a preliminary injunction." *S. Bay United Pentecostal Church v. Newsom*, 959 F.3d 938, 939 (9th Cir. 2020). On the current record, the Ninth Circuit would lack jurisdiction given that there are already-scheduled PI proceedings in the district court. See *Givens v. Newsom*, 830 F. App'x 560, 561 (9th Cir.

2020).

We would be open to stipulating/jointly requesting that the district court convert the denial of the TRO into a denial of a preliminary injunction to enable your client to pursue the current appeal. If you would like to file such a joint request, please let us know and we would be happy to prepare a draft for your review. Otherwise, we would request that you voluntarily dismiss the appeal (and if not, we intend to proceed to move to dismiss the appeal).

Happy of course to discuss as well if that would be helpful. Best, Jonathan

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# EXHIBIT J

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13 Attorneys for Defendants

Google LLC and YouTube, LLC

15 UNITED STATES DISTRICT COURT

16 NORTHERN DISTRICT OF CALIFORNIA

17 SAN FRANCISCO DIVISION

18 ROBERT F. KENNEDY, JR.,

19 Plaintiff,

20 vs.

21 GOOGLE LLC AND YOUTUBE, LLC,

22 Defendant.

Case No. 3:23-cv-03880

**JOINT STIPULATED REQUEST AND  
[PROPOSED] ORDER TO CONVERT  
ORDER DENYING TEMPORARY  
RESTRAINING ORDER TO DENIAL OF  
PRELIMINARY INJUNCTION**



**JOINT STIPULATION TO CONVERT ORDER DENYING TEMPORARY  
RESTRAINING ORDER TO A DENIAL OF A PRELIMINARY INJUNCTION**

Plaintiff Robert F. Kennedy, Jr. (“Plaintiff”) and Defendants Google LLC and YouTube, LLC (“Defendants”) (collectively, the “Parties”), by and through their respective counsel, hereby stipulate as follows:

WHEREAS, Plaintiff applied for a temporary restraining order on August 9, 2023 (Dkt. No. 7);

WHEREAS, Defendants opposed that application for a temporary restraining order (Dkt. No. 26);

WHEREAS, after this Court held a hearing at which both sides were heard, considered the filings and record, including Plaintiff’s application and materials filed in support of that application, and Defendants’ opposition and supporting materials, this Court issued an order denying Plaintiff’s application for a temporary restraining order on August 23, 2023 (Dkt. No. 32);

WHEREAS, this Court’s order denying the application for temporary restraining order also denied Plaintiff’s request for expedited discovery in support of a future motion for a preliminary injunction (Dkt. No. 32);

WHEREAS, on August 21, 2023 this Court issued a Tentative Case Management and Scheduling Order setting a briefing schedule on Google’s motion to dismiss filed on August 30, 2023 and Plaintiff’s anticipated preliminary injunction motion on September 25, 2023 (Dkt. No. 30);

WHEREAS, on August 29, 2023, Plaintiff filed a notice of appeal of the August 23, 2023 order denying the application for a temporary restraining order (Dkt. No. 33);

WHEREAS, on September 1, 2023, the Court of Appeal for the Ninth Circuit issued an order stating that “[o]rdinarily, an appeal does not lie from the denial of an application for a temporary restraining order” because “such appeals are considered premature and are disallowed in the interests of avoiding uneconomical piecemeal appellate review.” Order, *Kennedy v. Google*, No. 23-16141 (9th Cir. Sept. 1, 2023). The Court then ordered Plaintiff to file “[w]ithin 21 days” “a statement explaining why the appeal should not be dismissed for lack of jurisdiction or move

1 for voluntary dismissal of the appeal.” *Id.*;

2 WHEREAS, given that this Court addressed the merits in considering Plaintiff’s  
3 temporary restraining order (“TRO”) application, and concluded that Plaintiff is not likely to  
4 prevail on the merits or suffer irreparable harm, Plaintiff contends that the denial of its  
5 application for a TRO is tantamount to a denial of a motion for a preliminary injunction and  
6 Defendants do not oppose;

7 WHEREAS, the denial of a motion for a preliminary injunction is appealable under 28  
8 U.S.C. § 1292(a)(1);

9 WHEREAS, judicial economy favors converting the denial of a temporary restraining  
10 order into a denial of a preliminary injunction in order to avoid needlessly duplicative briefing in  
11 this Court and to facilitate appellate review;

12 IT IS THEREFORE STIPULATED that, subject to the Court’s approval:

13 1. This Court’s August 23, 2023 order denying the temporary restraining order (Dkt.  
14 No. 32) is hereby converted into an order denying a preliminary injunction, without any effect to  
15 the remainder of the order;

16 2. All deadlines related to the motion for a preliminary injunction are hereby vacated;  
17 and

18 3. None of the aforementioned orders shall impact the briefing schedule on Google’s  
19 motion to dismiss (Dkt. No. 30).

20  
21 DATED: September 11, 2023

22 **JW HOWARD/ATTORNEYS, LTD.**

**MUNGER, TOLLES & OLSON LLP**

23 /s/ Scott J. Street

/s/ Jonathan H. Blavin

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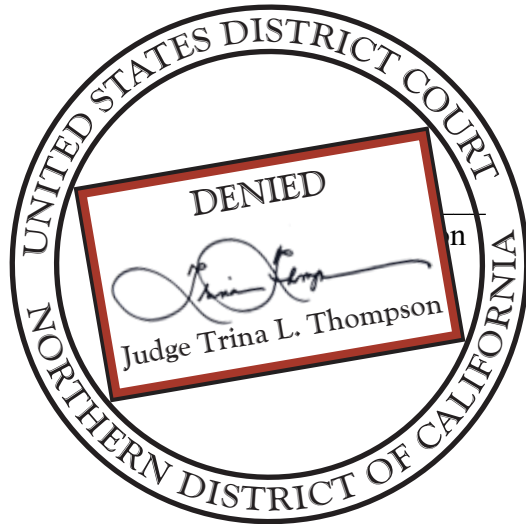
*Attorneys for Defendants*

**[PROPOSED] ORDER**

Pursuant to the Parties' Stipulation, and for good cause shown, this Court orders as follows:

1. This Court's August 23, 2023 order denying the temporary restraining order (Dkt. No. 32) is hereby converted into an order denying a preliminary injunction;
2. All deadlines related to the motion for a preliminary injunction are hereby vacated; and
3. None of the aforementioned orders shall impact the briefing schedule on Google's motion to dismiss (Dkt. No. 30).

DATED: September 12 th, 2023



**ATTESTATION**

I, Jonathan H. Blavin, am the ECF user whose ID and password are being used to file this document. In compliance with Local Rule 5-1(i)(3), I hereby attest that all other signatories listed have concurred in this filing.

/s/ Jonathan H. Blavin  
Jonathan H. Blavin